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CENTRE FOR INNOVATION RESEARCH AND FACILITATION IN INTELLECTUAL PROPERTY FOR HUMANITY AND DEVELOPMENT (CIRF in IPHD)

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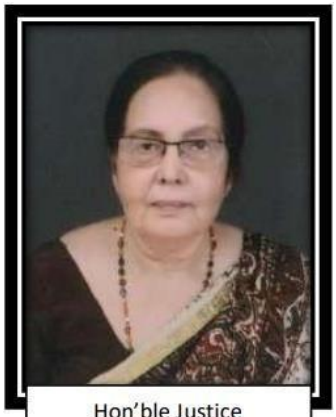

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It's a matter of great pride and happiness for Chanakya National Law University Patna that the Centre for Innovation research and facilitation in Intellectual Property for Humanity and Development (CIRF in IPHD) is launching International E-Journal: THE CHANAKYA LAW REVIEW (CLR). It's a half yearly journal with SCOPUS standard Index to achieve, multidisciplinary in Law, Social Sciences, and Sciences, Humanities interface with Law. It's a journal of innovation in research.

In the entire subjects interface with Law. Since it's an e-journal, it has open access world-wide. The Scholarly research papers will disseminate and enrich our knowledge in various disciplines. It will share the research being done all over the world. This Journal shall help in improving the quality of research and teaching. It is Volume 3 Issue 2. The ISSN no. shall be obtained as per Rule. I express my pleasure in launching this Journal and wish its time-frame release. Wishing all the Best to all the stakeholders and the CIRF Team.

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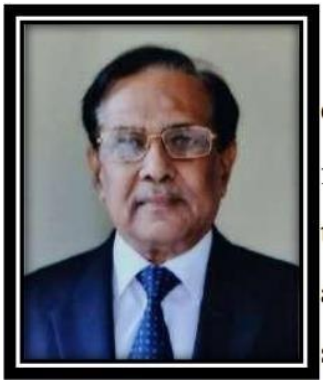

I express my pleasure on the launching of a prestigious journal **THE CHANAKYA LAW REVIEW (CLR)**. This is a half yearly Journal carrying multidisciplinary publication on fundamental research, with its first issue from January 2021.This E-Journal is international in character, and its circulation is through online. The potential of scholars will be a great benefit to the students, researchers and academicians all over the world in all disciplines.

The editorial Board has been constituted keeping in view of maximum participation, collaboration, circulation for the exchange of views and contribution to academic world, society, policy makers and industry. In the era of globalisation and on-line /information technology, this e-journal is a need, which the Centre of the CNLU is making efforts in the best possible way. Hence I would like to appeal to concerned to actively participate for making this journal of Repute in quality, standard citation, and research methodology. The centre is making efforts to develop this journal with SCOPUS standard. Wishing all the members of editorial board and stake holders to Cooperate and make it a journal of high repute in quality, standard and integrity. Wishing all the Best to all and CIRFTeam.

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PREFACE

The CHANAKYA LAW REVIEW (CLR) is a half yearly International Journal of multidisciplinary-Fundamental Research in Law, Social Sciences, Sciences and Humanities interface with Law, with SCOPUS index database objectives to achieve. The legal education is the backbone and driving force towards social justice. In fact it's a social justice education. The study of law encompasses all the aspects of society. It is a study of society which needs to be regulated by social norms and statutory laws.

The social behaviour depends upon the behaviour of the people living in the society. Since human needs are varied, so the inter relations with various disciplines. It has impact on the administration of Justice System and governance. In order to explore the significance of interdisciplinary study, 'the Chanakya Law Review (CLR)' is being launched by tCIRF in IPHD of CNLU. This Journal will provide a platform to the academicians all over the world on the inter-disciplinary, cross-disciplinary and multi-disciplinary issues in Sciences, social sciences and humanities interface with laws. Keeping in view the needs and nature of the journal, the editorial board has been constituted. I express my gratitude to all esteemed members on the editorial board. It is an online journal for open access to all. The ISSN no. shall be obtained as per rule.

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Climate Change Mitigation and Adaptation: The Legal Framework

Hrishikesh Manu[1]

ABSTRACT

At the international, regional, and national levels, a complex legal framework addresses climate change mitigation and adaptation. The 1992 United Nations Framework Convention on Climate Change (UNFCCC) provides the overarching legal framework for international cooperation on climate change at the international level. The ultimate goal of the Convention is to stabilize greenhouse gas concentrations in the atmosphere at a level that would prevent hazardous anthropogenic climate system interference. The Paris Agreement, which was adopted in 2015 under the UNFCCC, is a legally binding agreement that requires Parties to take action to combat climate change and to adapt to its impacts. Parties are required to regularly prepare, communicate and maintain successive nationally determined contributions (NDCs) that outline their efforts to reduce emissions and strengthen resilience to climate change. In addition to the United Nations Framework Convention on Climate Change and the Paris Agreement, a number of other international treaties and agreements address specific aspects of climate change mitigation and adaptation. For instance, the Convention on Biological Diversity and the United Nations Convention to Combat Desertification address land use and biodiversity issues, which are crucial for both mitigation and adaptation. Several regional agreements and initiatives exist to combat climate change at the regional level. The African Union has established a Climate Change and Adaptation Fund to support adaptation initiatives on the continent. Countries have implemented a range of laws, rules, and policies to promote mitigation and adaptation activities at the national level. These can include renewable energy targets, carbon pricing mechanisms, and building codes that take into account the impacts of climate change. In addition, countries have produced national adaptation plans and policies that define the steps they will take to adjust to climate change's effects.

This paper will examine the legal framework that is relevant to the adaptation and mitigation of climate change. It will also explore the legal concerns that arise as a result of it, as well as the resulting conflicts.

Keywords: Climate Change, Mitigation, Adaptation, Legal Framework, Paris Agreement

Introduction

Climate change is one of the most critical global problems of our time, with the potential to have far-reaching and long-lasting consequences for the planet and its inhabitants. One of the most significant threats of climate change is rising sea levels, which can cause coastal flooding

[1] Assistant Professor of Law, Chanakya National Law University, Patna.

and erosion, threaten low-lying areas and small islands, and displace millions of people. As the planet warms, the polar ice caps and glaciers are melting, which contributes to sea level rise. Climate change also leads to more frequent and severe weather events, such as heat waves, droughts, floods, and storms. These events can cause loss of life and property damage, as well as disrupt agriculture and food production. In addition, climate change can lead to the spread of diseases and pests to new areas, and threaten the survival of many plant and animal species. To reduce these risks, it is essential that immediate actions are taken to slow and eventually stop the warming of the planet by reducing greenhouse gas emissions and increasing carbon sinks.

The legal framework for climate change mitigation and adaptation is primarily established at the international level through agreements such as the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement. These agreements set goals for reducing greenhouse gas emissions and provide a framework for countries to work together to address climate change.

In order to stop additional warming of the planet, a strategy known as mitigation emphasizes cutting emissions of greenhouse gases. In most cases, efforts to mitigate climate change focus on either increasing energy efficiency or transitioning to renewable energy sources. There are several legal concerns that arise from attempts at mitigation. We need to figure out how to properly control emerging energy sources like geothermal.[2]

Although adaptation and capacity building are separate concepts, they are interconnected in significant manners. Successful adaptation strategies often involve enhancing the capabilities of individuals and institutions to carry out essential research, planning, and implementation endeavours. Capacity building initiatives should be customized to meet the distinct requirements of stakeholders, taking into account their current capabilities and the specific obstacles they encounter in tackling climate change. Furthermore, it is imperative to carry out both adaptation and capacity building initiatives within the framework of wider sustainable development objectives, such as the alleviation of poverty, promotion of gender parity, and stimulation of economic advancement. An integrated approach that takes into account the social, economic, cultural, and environmental factors that influence vulnerability and resilience to climate change is necessary.

[2] Powell, B. & Kauffman, R. (2020). *Climate change mitigation and adaptation.* Law Now, 44(4), 7

Adaptation is required to complement climate change mitigation. The IPCC defines adaptation as:

> *The process of adjustment to actual or expected climate and its effects. In human systems, adaptation seeks to moderate or avoid harm or exploit beneficial opportunities. In some natural systems, human intervention may facilitate adjustment to expected climate and its effects.*[3]

The law is a potent instrument for implementing climate change adaptation. The government may proactively adopt legislation for the goal of climate change adaptation, or it may indirectly address adaptation-related concerns.

The objective of mitigation strategies is to curtail or prevent the release of greenhouse gases into the atmosphere. These strategies encompass a diverse array of methods, including the adoption of novel technologies and sustainable energy sources, enhancing the efficiency of existing equipment and practices, and modifying individual behaviours and consumption patterns. Mitigation efforts encompass a broad spectrum of actions, ranging from extensive undertakings such as the establishment of advanced public transportation systems and the deployment of renewable energy grids, to more localized and individualized measures such as the development of energy-efficient cook stoves and the advocacy of bicycling and walking as viable means of transportation.[4]

Addressing the Effects of Climate Change

Addressing the effects of climate change is a complex and pressing issue that requires global cooperation and action from governments, organizations, businesses, and individuals. Adaptation and mitigation strategies can help communities and ecosystems prepare for and cope with the impacts of a changing climate. Adaptation strategies include developing drought-resistant crops, constructing sea walls to protect against rising sea levels, and planning for more frequent natural disasters. Addressing climate change requires coordinated efforts at the international level. This includes international agreements, such as the Paris Agreement, which aims to keep the global temperature increase below 2°C above pre-industrial levels.

Adaptation is required to address the impacts of climate change because adaptation is the only available and suitable reaction to certain problems. Adaptation along with mitigation is

[3] https://www.ipcc.ch/site/assets/uploads/2018/02/WGIIAR5-AnnexII_FINAL.pdf, accessed on 02 Feb 2023
[4] UNEP, https://www.unep.org/explore-topics/climate-action/what-we-do/mitigation accessed on 02 Feb 2023

acknowledged as one of the means of attaining sustainable development, which improves the economic situation of the poor, who are most sensitive to climate change.[5]

So far, governments and politicians have had only moderate success in putting into place an international climate agreement to limit GHG emissions around the world. As an alternative, there are often calls in the political world to make unilateral progress on mitigation to increase global mitigation. The main argument in favour of such a strategy is that progress in mitigating climate change will force other countries to act in the same selfless way, which will make climate change better. Economists, on the other hand, have often said that unilateral measures of mitigation policy may not be very effective because other players just crowd them out. In the absence of a global agreement or a world government, each country decides on its own how to handle climate change. When countries plan their climate policies, they have to think about how all the other players will react.[6]

International law provides a framework for addressing climate change by establishing obligations and responsibilities for countries to take action to reduce greenhouse gas emissions and mitigate the impacts of a changing climate. The UNFCCC, which was adopted in 1992, is the cornerstone of international efforts to address climate change. It sets the objective of stabilizing greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous human interference with the climate system. The Kyoto Protocol, which was adopted in 1997 under the UNFCCC, established binding targets for developed countries to reduce their emissions of greenhouse gases.

The Paris Agreement, which was adopted in 2015 under the UNFCCC, builds on the principles of the UNFCCC and aims to strengthen the ability of countries to deal with the impacts of climate change. The Paris Agreement sets a target of limiting global temperature rise to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C.

UNFCCC Mitigation and Adaptation Initiatives

The UNFCCC recognizes both mitigation and adaptation as essential components of climate change mitigation and has established a variety of mechanisms and strategies to support and promote these efforts. Article 4.1 of the UNFCCC mandates that countries must develop and

[5] Rosencranz, A., Singh, D., & Pais, J. G. (2010), Climate change adaptation, policies, and measures in India, Georgetown International Environmental Law Review, 22(3), 576

[6] Heike Auerswald, Kai A. Konrad and Marcel Thum, Adaptation, mitigation and risk-taking in climate policy, Journal of Economics, Vol. 124, No. 3 (2018), pp. 269-287

implement national and regional plans to combat climate change. These plans should include specific actions to mitigate the effects of climate change and be regularly reviewed and revised.[7]

Article 4.1(d) of the UNFCCC mandates that all member nations promote sustainable practices and collaborate to safeguard and enhance the capacity of natural resources such as forests, oceans, and other ecosystems to absorb and store greenhouse gases not regulated by the Montreal Protocol. This includes preserving and managing these resources to assure their continued effectiveness in mitigating climate change's effects.

The comprehensive strategy for mitigating climate change recognizes that greenhouse gases (GHGs) originate from a variety of sources and that each GHG type has a distinct impact on the climate. To effectively combat climate change, all of these sources and sinks of greenhouse gas emissions must be evaluated collectively. Calculating global warming potentials (GWPs) for each GHG is one approach. GWPs make it possible to compare the emissions of various gases using a singular CO2-equivalent (CO2e) metric. For instance, methane has a much higher GWP than carbon dioxide, indicating that a given quantity of methane emissions has a much greater impact on the climate than the same quantity of CO2 emissions.[8]

National Adaptation Plans (NAPs) are an integral part of global efforts to mitigate the effects of climate change, especially in vulnerable nations. NAPs are a procedure by which countries assess their vulnerability to climate change, identify adaptation priorities, and develop strategies and actions for building resilience. The UNFCCC recognizes NAPs as a crucial mechanism for enhancing developing countries' adaptation efforts.[9]

NAPs provide nations with a structured methodology for assessing and addressing their susceptibilities to the effects of climate change. Typically, the NAP procedure includes multiple phases, such as evaluating present and anticipated climate hazards, identifying adaptation preferences, conducting cost-benefit analyses, and developing and implementing adaptation strategies. NAPs are typically developed through a participatory and inclusive process that incorporates a variety of stakeholders, including government entities, community members, non-governmental organizations, and private businesses.[10]

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[7] Article 4.1(c), Promote and cooperate in the development, application and diffusion, including transfer, of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol in all relevant sectors, including the energy, transport, industry, agriculture, forestry and waste management sectors.

[8] Daniel Bodansky, Jutta Brunnee, Lavanya Rajamani, International Climate Change Law, Oxford University Press, First Edition, p. 133

[9] UNFCCC. (2019). Decision 4/CMA.1: Modalities for the Implementation of the Paris Agreement.

[10] UNFCCC. (2012). Technical Guidelines for the National Adaptation Plan Process. Available at, https://unfccc.int/resource/docs/2012/cop18/eng/08.pdf accessed on 08 March 2023

Financial Mechanism

The financial mechanism of climate change mitigation and adaptation refers to the funding and financing strategies used to address the impacts of climate change. This includes both reducing greenhouse gas emissions, which cause climate change, and adapting to the impacts that are already being felt around the world. Climate change mitigation requires significant investments in low-carbon technologies and infrastructure, such as renewable energy, energy efficiency, and carbon capture and storage. Adaptation requires funding for measures such as building sea walls, improving water management systems, and relocating communities at risk of flooding.

In accordance with the principle of 'Common but Differentiated Responsibilities,' the United Nations Framework Convention on Climate Change (UNFCCC) requires developed countries to provide financial resources "to assist developing countries in meeting their UNFCCC obligations and implementing the treaty's objectives."[11]

Under the United Nations Framework Convention on Climate Change (UNFCCC), there are several financial mechanisms in place to support climate change mitigation and adaptation efforts globally. These mechanisms are designed to provide funding and technical assistance to developing countries to help them transition to low-carbon and climate-resilient economies.

The Green Climate Fund (GCF) is a key financial mechanism under the UNFCCC, established in 2010 to support developing countries in their efforts to address climate change. The GCF provides financing for a wide range of activities, including renewable energy, energy efficiency, and adaptation projects.

The Clean Development Mechanism (CDM) is designed to encourage investment in low-carbon technologies in developing countries and to promote sustainable development. The CDM allows developed countries to earn carbon credits for financing emissions reduction projects in developing countries.

The financial mechanisms under the UNFCCC are designed to support developing countries in their efforts to mitigate and adapt to the impacts of climate change, and to promote sustainable development. They play a critical role in ensuring that the necessary resources are available to address the challenge of climate change and to build a more sustainable future.

Outside of the UNFCCC, the most significant multilateral endeavour is the Climate Investment Funds of the World Bank. In response to the Bali Action Plan of 2007, these funds were established in 2008 with $6.1 billion in promises from ten donor nations, including the United

[11] United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 Mach 1994) 1771 UNTS 107 (UNFCCC) art 3(1) 4(1) (3) (4) and (5).

States ($2 billion), the United Kingdom ($1.5 billion), and Japan ($1.2 billion). The funds are administered by boards in which both donors and recipients have an equal say. There are two distinct funds: the Clean Technology Fund, which includes programs in electric power, transportation, and energy efficiency, and the Strategic Climate Fund, which supports new development approaches that involve adaptation to specific climate challenges and complement development activities.[12]

In 2010, the World Bank estimated that adaptation to a 2°C increase in average temperature between 2010 and 2050 would cost between $70 billion and $100 billion per year. The United Nations Environment Programme (UNEP) estimated in 2016 that the true cost of adapting to climate change in developing countries could range between $140 and $300 billion per year by 2030 and between $280 and $500 billion per year by 2050. According to the report, "to prevent an adaptation gap, the total adaptation money available in 2030 must be around six to thirteen times more than international public finance today."[13]

The Paris Agreement[14], under the United Nations Framework Convention on Climate Change (UNFCCC), aims to strengthen the ability of countries to deal with the impacts of climate change. One of the key elements of the Paris Agreement is the provision of climate finance to support developing countries in their efforts to mitigate and adapt to the impacts of climate change. Under the agreement, developed countries have agreed to provide financial resources to assist developing countries in their transition to low-carbon and climate-resilient economies. The Paris Agreement calls for the mobilization of a significant amount of financial resources from a variety of sources, including public and private financing, to support climate change mitigation and adaptation efforts. The GCF is a key financial mechanism under the Paris Agreement, established to provide financial resources to developing countries for low-carbon and climate-resilient projects. The GCF is supported by contributions from developed countries.

The Paris Agreement calls for the creation of National Adaptation Plans (NAPs), which are designed to help developing countries integrate adaptation into their development planning and decision-making. The NAPs are supported by financial resources from the GCF and other international and national sources.

[12] Frank Ackerman, Financing the Climate Mitigation and Adaptation Measures in Developing Countries, https://unctad.org/system/files/official-document/gdsmdpg2420094_en.pdf, accessed on 30 Jan 2023

[13] Charles Di Leva, Financing Climate Mitigation and Adaptation, Carbon & Climate Law Review, Vol. 11, No. 4, Special Issue on the Changing Prospects for Climate Law and Policy in the US (2017), p. 317

[14] Adopted in 2015

The Paris Agreement requires that developed countries report on their provision of financial resources, and that developing countries report on the use of these resources, to ensure transparency and accountability. The agreement encourages public-private partnerships as a way to mobilize private sector investment in low-carbon and climate-resilient projects.
Building trust between developing and developed countries is necessary for achieving the Paris goals, as especially the poorest countries require assistance in addressing climate impacts for which they share little responsibility.

Climate Change Adaptation and Human Rights

Climate change has significant impacts on human rights, as it exacerbates existing inequalities and creates new ones, particularly for vulnerable communities and individuals. Climate change adaptation measures must be implemented in a way that respects, protects, and fulfils human rights.

In recent years, private and public actors have endeavoured to apply human rights law to the issue of climate change in light of the growing amount of data regarding the escalating and discriminatory impact of climate change. Such a human rights framework has special normative appeal due to the reality that those who are already vulnerable to human rights violations due to characteristics such as poverty, geography, gender, ethnicity, disability, and age are also likely to face the worst climate change effects.[15]

In diplomatic, non-governmental, and academic efforts to study the effects of a changing climate, the link between climate change and human rights is becoming clearer. For example, in March 2008, the UN Human Rights Council passed Resolution[16], which was the first UN resolution to recognize that climate change is an immediate threat to people and communities around the world and has major effects on the enjoyment of human rights. The resolution asked the OHCHR to do a "detailed analytical study on how climate change affects human rights." The OHCHR Report made strong claims about the many ways climate change affects human rights.

Like other enduring concerns in environmental justice, adaptation is likely to be a highly contextual and even individual experience. There will be wealthy elites in even the poorest countries, and there will always be those in the wealthiest civilizations who lack the resources to adapt to climate change. However, adaptive capacity is often correlated with general

[15] Margaux J. Hall and David C. Weiss, Climate Change Adaptation and Human Rights: An Equitable View, Climate Change: International Law and Global Governance (p. 274). Nomos Verlagsgesellschaft mbH.
[16] Resolution 7/23

capability at the global, national, local, group, and individual levels. Developing nations and their citizens are especially vulnerable to the negative effects of climate change on health, security, and stability.

Most international agreements protecting human rights do not have effective mechanisms for enforcing those agreements. Whether or not NGOs have access to information on the State's fulfilment of human rights, and whether or not the treaty body committee has the time and expertise to review the report and question state representatives all play a role in how effective the treaty body monitoring system is. The treaty body monitoring system's efficacy may also depend on the media's interest in the issue, the committee's ability to follow up on insufficient reports, and the quality of the committee's concluding conclusions. There are a lot of hiccups throughout the process.[17]

It is crucial that national and regional governments start including human rights concerns in adaptation decision-making immediately. The National Adaptation Programme of Action for many of the world's least developed states shows that developing a policy framework to guide state and local governments in making informed adaptation decisions is often the first step in putting an adaptation plan into action. Human rights standards and protections should be considered in decision-making processes if human rights are to be safeguarded in the face of climate change.

Climate change adaptation measures must be developed and implemented in a transparent and participatory manner, taking into account the views and needs of affected communities and individuals. This includes the right to receive information on the impacts of climate change and the measures being taken to address them. Climate change adaptation measures must respect, protect, and fulfill human rights, ensuring that the most vulnerable communities and individuals are not left behind. This requires a human rights-based approach to adaptation, which prioritizes the needs and perspectives of those most affected by climate change.

Climate change adaptation and mitigation in India

India's per capita carbon dioxide emissions may be low, and its historical emissions may have been negligible compared to those of some developed nations, but its annual greenhouse gas emissions rank third in the world. This is as a result of factors such as a growing population, an expanding economy, and rising energy demands. In addition, India's unique topography, demographics, and economic inequality make it exceedingly vulnerable to the effects of

[17] *Supra* note 15.

climate change. An increase in the likelihood of catastrophic weather events, a rise in sea level, the draining of Himalayan glaciers, water scarcity, and food insecurity are examples of these vulnerabilities. Therefore, India must take immediate action to reduce its greenhouse gas emissions and acclimate to climate change's effects.[18]

The Indian government has launched a range of policies, programs, and initiatives with the objective of mitigating greenhouse gas emissions, advancing the use of renewable energy, and increasing climate resilience. These efforts are detailed in the Nationally Determined Contributions (NDCs) submitted to the UNFCCC.

India has consolidated its Nationally Determined Contributions (NDCs) for the Paris Agreement into a series of "enhanced targets" aimed at achieving net zero emissions by 2070. India's net zero agenda is ambitious and comparable to that of other industrialized nations, despite its low historical contribution to greenhouse gas emissions.[19]

The National Action Plan on Climate Change (NAPCC) launched in 2008 is considered a crucial policy for climate change mitigation in India. The proposed plan comprises of eight distinct missions that are centered on particular domains, such as solar energy, energy efficiency, sustainable habitat, and water conservation.

India has emerged as a prominent figure in global climate change negotiations, championing the concerns of developing nations and advancing a trajectory of sustainable, low-emission growth. The nation has officially endorsed the Paris Agreement and presented its Nationally Determined Contribution (NDC) outlining a target to decrease emissions intensity by 33-35% by the year 2030 relative to the levels recorded in 2005.

India's current climate action plans, like those of other developing nations, are motivated by an awareness of the dangers and the financial penalties of inaction. Investments in environmentally friendly technologies and robust infrastructure can protect the economy against climatically caused risks in the future, according to India's 2021–22 Economic Survey. India's efforts to combat climate change have primarily been funded by domestic green financing sources up to now. The organization of its investment platform is currently a top priority as a means of directing the expanding pool of worldwide sources of climate funding.[20]

[18] Shibani Ghosh, Litigating Climate Claims in India, 114 AJIL Unbound, 45–50 (2020)
[19] https://www.lse.ac.uk/granthaminstitute/explainers/how-is-india-tackling-climate-change/ accessed on 14 Feb 2023
[20] *Ibid.*

Conclusion

Adaptation is required to address the impacts of climate change because adaptation is the only available and suitable reaction to certain problems. Adaptation along with mitigation is acknowledged as one of the means of attaining sustainable development, which improves the economic situation of the poor, who are the most sensitive to climate change.

Adaptation to climate change on a global scale may cost hundreds of billions of dollars annually. Scaling up resources, using public funds, engaging the private sector in developing and implementing financial risk management mechanisms that encourage adaptation, and incorporating adaptation measures into national policies are just some of the suggested mechanisms for raising money that have been proposed by the UNFCC. To guarantee that money reaches the most vulnerable groups in society, the UNFCC also suggests developing suitable institutional and operational structures.

A human rights approach to adaptation would place an emphasis on gathering information at the local level to back up adaptation efforts, in line with the focus of human rights law on individuals and communities. The international consensus on some values that can serve as the foundation for greater cooperative action toward adaptation can be expressed most effectively through a human rights-based approach to adaptation.

There is no denying that the issue of climate change is a complicated and multi-dimensional dilemma; hence, any solutions that are successful will need to take on a variety of shapes. A robust regime of efforts toward both adaptation and mitigation will be required.

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103rd Amendment: Not an Infringement of Basic Structure Doctrine

Suruchi Priya[21]

ABSTRACT

Equality is a Basic Structure held by Supreme Court in various cases and in the Mandal's case it was held that in extra ordinary situation the 50% ceiling for reservation can be increased. Now that the Constitution has been amended, a 10% reservation has been made for the EWS, and EWS is defined in the Constitution in terms of the income cap and other assets. Additionally, it is unquestionably not inconsistent with the Mandal ruling and the Basic Structure Doctrine. With the times changing, caste cannot be the only criterion for identifying socially disadvantaged groups because some of them have attained economic status and a dominant position. India's Preamble guarantees social and economic justice, and the reservation system for those from economically disadvantaged groups aims to reduce economic inequality. The Indian Constitution was drafted with the intention of accomplishing a number of social and economic objectives. In India, there are many upper-class individuals who live in poverty and hunger, so this reservation helps to restore balance to some extent.

Keywords: Basic Structure, EWS, Economic Status, Reservation.

Introduction

When the country was under colonial rule, the dominant forces in society have consistently and vehemently opposed the concept of caste-based reservations in all areas of society. It was hypothesised that reservations were a British plot to "divide and rule" India through the use of artificial barriers. Even from liberal quarters, caste-based reservations were met with the primary criticism that it would lead to an inefficient bureaucracy. This was one of the primary criticisms that caste-based reservations faced. During the debates over the Mandal Commission, it was impossible for critics to differentiate between party politics and caste, and

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the commission was frequently viewed as a populist measure that would not result in any positive outcomes for the nation.

The 103rd amendment was passed after taking into consideration the findings of the Sinho Commission Report, which stated that a substantial portion of people who belong to the unreserved category are living below the poverty line. These economically weak classes are at a disadvantage due to the poverty and lack of resources, which has prevented them from being eligible for any of the reservations the backward classes, defined in the Mandal report, get. It modifies Article 15 and Article 16 to permit Parliament and every states to make "special provisions" for advancement of “economically weaker sections” of citizens (EWS). Reservations in educational institutions are now limited to 10 percent; in this reservation private schools and colleges are also included, but the colleges and schools which are operated by minorities are not included. In addition, 10% of appointments and positions can be reserved for the EWS.

ELIGIBILTY CRITERIA

i. People eligible for this 10% quota should not be covered by the scheme of policies governing reservations for SCs, STs, and OBCs, as well as those families with a total yearly income below Rupees 8 lakh would be referred to as EWSs for the benefit of reservation.

ii. Because other sections candidates who avail benefits of reservation like OBC (27%) and SC (15%) and ST (7.5%) in India, this 10% EWS reservation quota would only apply to General section candidates.

iii. The EWS candidate must have family who does not own or rent farming land that is at least five acres long and if they have residential house, it must be less than 1,000 square feet.

iv. The residential plot must be less than 100 yards in the notified municipality.

v. In the municipal area which is non notified the residential plot should not exceed 200 yards.

AMENDED ARTICLES

i. Article 15(6) is added to give economically weaker groups a chance to get into educational institutions, including private ones, whether they get help from the

government or not. This doesn't apply to minority educational institutions, which are covered by Article 30(1).

ii. Article 16 (6) is added to give reservations for economically backward individuals in government positions.

CHALLENGES

The only remaining constitutional question is whether the amended constitution complies with the basic structure doctrine. The Supreme Court's position on reservations made solely on the basis of economic considerations is a good place to start when examining constitutional issues. Indra Sawhney[22], the landmark Case from November 1992, eight out of nine judges ruled that the Narasimha Rao Government's executive order—rather than a constitutional amendment—providing for 10% reservations based solely on economic criteria was unconstitutional. In the 124th Amendment Bill, Youth for Equality was from the petitioner's side. They argued that reservations cannot be made solely on the basis of economic factors and that SC, ST, and OBC cannot be excluded from economic reservations because doing so would violate their fundamental right to equality guaranteed by Article 14. Further, In the Case of Indra Sawhney vs. Union of India[23], it was decided that 50 percent was the maximum number of reservations that could be made. After another landmark Case of Keshavnanda Bharati vs. the State of Kerala[24], all constitutional changes have to pass the test of the basic structure principle, which takes into account the most important parts of the Constitution, such as democracy, secularism, equality, and republicanism. In KC Vasant Kumar v. State of Karnataka[25], the Constitutional Bench discussed various aspects of what makes up the backward classes and established rules that included economic criteria as the prime factor. The class must meet the economic backwardness test and be comparable to scheduled castes and scheduled tribes in order to be considered a backward class.

After the 103rd Constitutional Amendment, 2019; the 50% cap in education and jobs goes to 60%. Since the Constitution did not allow for any reservations based on an economic basis as held by Mandal's case, there were no provision for reservation for EWS. Now that the Constitution has been amended, a 10% reservation has been made for the EWS, and EWS is defined in the Constitution in terms of the income cap and other assets. Additionally, since the

[22] Indra Sawhney v. Union of India, AIR 1993 SC 477.
[23] Ibid
[24] Kesavananda Bharati v. State of Kerala SC 1461
[25] K.C. Vasant Kumar & Another v State of Karnataka, AIR 1985 SC 1495

10% reservation applies to all religions, it will not infringe on the equality principle. In my opinion, the fundamental structure will remain intact. Additionally, it is unquestionably not inconsistent with the Mandal ruling. With the times changing, caste cannot be the only criterion for identifying socially disadvantaged groups because some of them have attained economic status and a dominant position. India's Preamble guarantees social and economic justice, and the reservation system for those from economically disadvantaged groups aims to reduce economic inequality. Hence, to reduce inequality by way of providing reservation to economic backward classes who have suffered a lot just because of falling in upper caste is a good initiative taken by government. This reservation helps to provide opportunities for upper-class individuals who cannot afford a good education due to the economic crisis. It eliminates the stigma associated with reservation, as many previously looked down on those who avail it. In India, there are many upper-class individuals who live in poverty and hunger, so this reservation helps to restore balance to some extent.

BASIC STRUCTURE DOCTRINE

The Supreme Court of India is the one who came up with the idea of the basic structure. The whole plan and structure of our Constitution is based on the idea that some basic parts are supposed to be permanent and unchangeable. The Basic Structure is an offshoot of a lengthy struggle that took place between Parliament and the Supreme Court concerning the nature and scope of amending power. The Indian Constitution was drafted with the intention of accomplishing a number of social and economic objectives. At the same time, it included a number of provisions that were intended to safeguard individual rights.

In the Indra Sawhney case, the decision involved comparing an executive order to the Constitution. Right now, we're talking about a change to the constitution that was made possible by Parliament's power to make laws. Since we don't care about legislative or executive power, the amendment will be tested against the "basic structure," not against the Constitution as it was before the amendment.

The pertinent question would be whether measures based solely on economic criteria infringe the Constitution’s "basic structure." Saying that "backwardness" in the Constitution can only refer to “social and educational backwardness” is insufficient, in my opinion. The Centre in his affidavit filed in Supreme Court said that the 103rd Amendment does not violate the Basic Structure:

"Merely affecting or impinging upon an article embodying a feature that is part of the Basic Structure is not sufficient to declare an amendment unconstitutional. To sustain a challenge against a constitutional amendment, it must be shown that the very identity of the constitution has been altered", reads the affidavit of Centre. It is further stated that a mere amendment to an Article of the Constitution, even if embodying a basic feature, will not necessarily lead to a violation of the basic feature involved."

The newly added clauses of Articles 15 and 16 are said to be enabling clauses for the advancement of the Economically Weaker Sections (EWS) and to be in line with the affirmative action principle. The argument that the EWS quota will go over the 50 percent limit for reservations is shot down by the fact that this limit, set by the Supreme Court in the Indira Sawhney case, no longer applies since the constitution is amended. The affidavit states that "conclusions made in Indra Sawhney are not applicable to the present case because the said judgement was rendered in relation to the constitutionality of some Office Memoranda issued by the Government of India in 1990.

CONCLUSION

Since equality is a Basic Structure held by Supreme Court in various cases and in the Mandal's case it was held that in extra ordinary situation the 50% ceiling for reservation can be increased, the 103rd Amendment is not the infringement of the principal of Basic Structure. In year 1961, The Government in Centre wrote to the governments in all States and expressing its opinion that it will be preferable to use the "Economic Test" instead of Caste for the purpose of reservation. On June 27, 1961, Pandit Nehru communicated to all the chief ministers and wrote-

"The only real way to help a backward group is to give opportunities of good education. But if we go in for reservation on communal and caste basis, we swamp the bright and able people and remain second- rate or third- rate. I am grieved to learn of how far this business of reservation has gone based on communal consideration. It has amazed me to learn that even promotion are based sometimes on communal or caste considerations. This way lies not only folly, but disaster."

It is a completely wrong idea to think that only some castes are backward and should get special treatment because of the same. In reality, people who are weaker and have less money could belong to be any caste. The 10% quota will contribute to the establishment of equity and

the provision of equal opportunities, thereby enhancing the position of the disadvantaged in the majority group. It would help them compete with those who already have an abundance of facilities and ensure a fair distribution of wealth.

At the end, the writer concludes the article with the suggestion that the government's next step should be to change the entire reservation system so that only ‘economic criteria’ is used to determine reservations.

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An Insight into the Enigma of Excessive Delegation: An Indian Perspective

Girisha Meena[26]

ABSTRACT

This paper attempts to study the theory of excessive delegation and trace its relevancy in contemporary times. The paper's objective is to showcase the impugned theories and substantively draw a coherent conclusion after undertaking an analysis of this critical Administrative law topic that exhibited an evolutionary curve and has witnessed questions over its constitutionality and abuse of power. The research would help in painting a clearer picture of the limitations of excessive delegation as well as factors to be kept in mind while deciding the presence of excessive delegation in a statute. Moreover, the study would showcase the similarities and the aspects in which other jurisdictions differ from India and the most important case laws and decisions involving excessive delegation. This research adds to the existing literature by tracing the landmark cases and the position of an excessive delegation under the Indian Constitution. The study would also help in drawing the conclusion to the age-old debate of the privy council and federal courts in the pre- independence era and views of the Supreme Court in the post-independence era regarding excessive delegation of fiscal powers, modifications, constitutional objections, power to include and exclude, power to repeal etc and aims to unravel these issues and look at the approach of the Indian parliament in solving them.

Keywords: Delegation, the Henry VIII Clause, Ordinance, Ultra Vires.

INTRODUCTION

Delegated legislation is one of the best-known topics in administrative law. In India, the governmental power is divided among the three organs horizontally, I.e. Legislature, Executive and Judiciary. In which legislature includes Parliament, Executive includes President, Vice President, Council of ministers and Attorney general and Judiciary includes Supreme Court

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and other courts of laws, Chief Justice of India and other judges of Supreme Court, etc. In simple words, the law-making process is in the hands of the legislature; implementation of the law is in the hands of the Executive and Judiciary functions to apply laws to specific cases. Austin defines delegated legislation *as "impossible to have law without legislature", but it turns into delegated legislation when the legislature delegates its powers under pressure*. As per 'Salmond', delegated legislation has been defined as *"that which proceeds from any authority other than the sovereign power and is therefore dependent for its continued existence and validity on some superior or supreme authority*".[27] In simple words, the law-making power of the legislature has been conferred on the executive.

Nowadays, the core of powers has been moved to the executive by the legislature. We can say, the main reasons for such growth are the burden and pressure on legislative bodies, complexity in everyday situations, unforeseen contingencies, emergencies, speediness, local requirements, public interest, and lack of formal experimentation, technicality, flexibility and many more. Sometimes, instead of doing all the legislation itself, it transfers its powers to the executive. Then all those laws resulting from the delegation from the legislative and made by the executive are known as delegated legislation. Sometimes legislative authority transfers its duties to its junior authorities, known as Sub delegation. Delegated legislation can be an independent law or a rule to existing law. They are classified into five bases that is title based (rules, regulations, bye-laws, notifications, direction), discretion based (conditional or contingent), purpose-based (executive to decide the date of commencement, implementation, tenure, etc.), authority-based (sub-delegation) and nature-based (exceptional delegation). Delegated legislation has four types, i.e. Normal, exceptional, Henry viii Clause (16th century) and finality clause.

If the court found the matter of facts that the delegation is above the permissible limits, such delegation will be excessive by law. There is not so much circumscribing in India regarding delegation, and there have been rare cases for the last 45 years which were upheld invalidated based on excessive delegation.

ISSUES RAISED

I. "Whether any legal conflicts and comparisons prevail in other jurisdictions regarding it? If yes, what are they"?

[27] 12 SALMOND, JURISPRUDENCE 116 (Sweet & Maxwell, 1966).

II. "Delegation allows speedy framing and implementation of rules and regulations and provides ease of governance. However, at the same time, it attracts the violation of the Constitution" How can this problem be unravelled?

III. "How is the doctrine of excessive delegation an immediate corollary of doctrine of separation of powers and whether this approach of preventing excessive delegation is suitable for ensuring due process"?

LIMITATION ON DELEGATION OF LEGISLATURE'S POWER

In India, the Constitution circumscribes and puts limitations on the legislature's powers and court functions to watch that the limitations and restrictions are correctly enforced. The position of the UK in this regard is that parliament is considered the supreme power, and there is no restriction on parliament to delegate its power further, and they are permitted to delegate limitless powers. However, the House of Lords faulted this type of comprehensive delegation and condemned this doctrine. India and USA follow the same pattern because of the existence of the theory of separation of power

The delegated legislation, unless the Constitution permits it is void. The essential legislative features cannot be delegated, and the non-essential features such as commencement of the statutes, supplying details adoption of active statutes, modifications, an extension of statutes, power to promulgate ordinances etc., are permissible. The higher authority should not be racked with excessive delegation. Do the facts decide whether the delegation is excessive or not? If the delegation is excessive, it will be declared void. Prior to the commencement of the Constitution, the case "*Jatindra Nath v. Province of Bihar"* [28] held that the legislature could not delegate its power to the executive beyond the 'conditional legislation'. After the Constitution came into force, the primary question was the status regarding independence and restrictions of delegation and whether there is a limitation on the delegation of powers legislative or not? Legislature cannot suspend its power regarding the fundamental rights of the executive bodies for making laws.

DOCTRINE OF EXCESSIVE DELEGATION

Excessive delegation means "when the legislature excessively delegates its legislative function to any other authority, such delegation will be held unconstitutional".[29] The delegation should

[28] Jatindra Nath v. Province of Bihar. AIR 1949 FC 175.
[29] Basheer, S., 2020. Excessive Delegation In The Judicial Appointments Bill? | Law And Other Things. [online]

not go beyond the permissible limit. There are not many cases of excessive delegation in the US so far. The first case which was held unconstitutional based on the excessive delegation was "*Panama Refining Company vs Ryan"*[30], and in the US, a few significant cases of this doctrine includes *"Schechter Poultry Corpn. Vs. the US*"[31] and "*Carter v. Carter Coal Co*."[32]. Even though the Supreme Court in India has validated the doctrine of excessive delegation in some cases, only those arose in emergent situations. There are no express provisions in the Constitution of India regarding the matter of to which extent delegation is permissible or restricted. This decision will rest in the hands of the Supreme Court on the case to case factual basis that delegation would be permissible or not. The doctrine of excessive delegation holds the law creation, law implementation and law enforcement together. When there is a balancing of fundamental rights, the legislature cannot delegate its power further because the legislature is expected to more, not less, when a law is created regarding fundamental rights.

PRINCIPLES TO DETERMINE EXCESSIVE DELEGATION:

1. The essential functions and the powers that make legislative policies are impermissible to be delegated.

2. Only certain functions in the time of need and based on reasonableness can be delegated in the modern dynamic society.

3. If the responsibilities and functions granted to the executive are lawful and reasonable, then they will be permissible. There cannot be a mere reason to declare the legislation due to excessive delegation when it says that the legislature must make more detailed provisions.

THE LAW OF ANY STATUTE MUST BE SUBJECT TO TWO TESTS IF IT IS ASSAILED ON THE GROUNDS OF EXCESSIVE DELEGATION-

1. Whether the crucial or legislative duty or responsibility is delegated?

2. Whether the articulation of such statute is done under the surveillance of legislature or not?

Law and Other things. Available at: <https://lawandotherthings.com/2014/08/excessive-delegation-in-judicia/> [Accessed 19 October 2020].

[30] Panama Refining Company v. Ryan, (1935) 293 U.S. 388.

[31] Schechter Poultry Corpn v. U.S, (1935) 295 U.S. 495.

[32]Carter v. Carter Coal Co., (1936) 298 US 238.

SIGNIFICANT U.S.A. CASE LAWS ON THE DOCTRINE OF EXCESSIVE DELEGATION

India and USA are in the same position. Both follow the doctrine of separation of power. Certain restrictions are there in the USA for the delegation of legislation.

"*Panama Refining Company vs Ryan*"[33]

This was the first case in the record which held a provision unconstitutional based on "excessive delegation. The constitutional validity of the National Industrial Recovery Act was challenged. In the lower court, it was held validated, but in the Appellate court, it was found to be unconstitutional by 8:1 on the grounds of excessive delegation. For Injunction and enforcement of NIRA had been sought by Panama Refining Co. The decision said that excessive delegation was there while enacting the law. Test of the delegation laid down

"SchechterPoultry Corpn. v. the US."[34]

The validity of Sec.3 of NIRA was challenged because, in this, the President has taken down the authority to develop a code of conduct among the industries and business groups. It was held that power was excessively conferred upon the executives and, thus, unconstitutional. The parent act prescribed no standard.

INDIAN DECISIONS ON EXCESSIVE DELEGATION

1. THE PRIVY COUNCIL ON DELEGATED EXCESSIVE LEGISLATION

Subordinate authority should remain out of burden. The imperial parliament has circumscribed the power of delegation. It should not be beyond the expressed limits by the Act of Imperial parliament. The council act says that the Governor cannot create legislative power. Only conditional delegation is permissible, as upheld in Queen v. Burah.

2. ESSENTIAL LEGISLATIVE FUNCTION

Harakchand v. India[35]

[33] Panama Refining Company vs. Ryan, (1935) 293 U.S. 388.
[34] SchechterPoultry Corpn v. U.S, (1935) 295 U.S. 495.
[35] Harakchand v. India, (1970) 1 SCR 479.

The validity of the Gold Control Act of 1968 was challenged. Section 5(2)(b) held invalid based on excessive delegation of power. The power was upheld to be "legislative".

DK Trivedi v. Gujarat[36]

The contention was made on the validity of Sec. 15(1) of the Mines and Minerals Act, 1957 because the excessive delegation of the power made the state government act arbitrarily, and the delegation is canalised and unguided. The court upheld the validity and held that it did not amount to excessive delegation because the state government was following the guidelines, and there were objects for the reason of conferring the power on the government. The unlimited authority was there on the executive.

3. CONSTITUTIONAL OBJECTIONS AND EXCESSIVE DELEGATION

There are two kinds of delegations of executive power. One can be legislative and, on the other hand, can be executive. The permit of legislative power can be question marked based on excessive delegation, and the permit of executive delegation may be challenged based on violation of Article 14 of the Indian Constitution, i.e. Right to equality. If any law suffers from the excessive delegation, then the rule, i.e. essential legislative function, cannot be delegated, strikes that down and decreases the arbitrary power use.

4. EXCESSIVE DELEGATION AND FEDERAL COURT

Emperor v. Benorilal Sharma[37]

The ordinance was held unconstitutional by the Calcutta High Court. The powers of special courts were provided in an ordinance that government will allow which types of offences are to be tried by special courts and can be extended to other territories, and establishment of the special courts can be done to those extended areas also. This power was challenged. Such Unconstitutionality was that the legislature's power was excessively delegated, and the position of *Queen v. Burah* was retraced. The courts took a rigid approach.

Jatindra Nath v. Province of Bihar"[38]

Rejected Queen v. Burah and Benorilal case and put stringent views. This case has put a restriction on the scope of Legislative actions. Legislative cannot further delegate beyond the

[36] DK Trivedi v. Gujarat, (1986) 1 SCR 479.
[37] Emperor v. Benorilal Sharma, (1945) 47 BOMLR 260.
[38] Jatindra Nath v. Province of Bihar, AIR 1949 FC 175.

conditional legislation. Also, Federal Court upheld legislative delegation as ultra vires. The power to extend the life of the Act and the power of modification is invalid and cannot be delegated to the executive. This case created doubt, narrowed the scope, and created a shadow and confusion on similar provisions.

5. EXCESSIVE DELEGATION OF FISCAL POWER.

Gwalior Rayon Silk Manufacturing Co Ltd. V Assistant Commissioner of Sales Tax[39]

The validity of Section 8 (2)(b) of the Central Sales Tax Act was put in a question on charging the sales tax on the commercial activities of interstate trade at a 10 per cent rate or the rate authorised interstate, whichever will be higher is applicable. The section was held valid by the judges.

Avinder Singh V. Punjab[40]

In this case test for the extent of the delegation was rested by Justice Krishna Iyer-

I. There are powers of the legislature, and it cannot efface itself.

II. The Essential legislative powers cannot be further delegated. Delegation is notrestricted to essential functions.

III. If there is excessive delegation, the parliament should be ready to control that.

Shiv Dutt Raj Fateh Chand V. India[41]

The validity of Section 9(2A) of the Central Sales Tax Act, 1956 was challenged. The provisions of this Act say that the penalties will be the same as they were in General Sales Tax Law, and it was upheld by a court on the basis that there was no presence of excessive delegation.

MP V. Mahalaxmi Fabric Mills Ltd.[42]

[39] Gwalior Rayon Silk Manufacturing Co Ltd. v. Assistant Commissioner of Sales Tax, (1974) 2 SCR 879.
[40] Avinder Singh v. Punjab, (1979) 1 SCR 845.
[41] Shiv Dutt Raj Fateh Chand v. India, (1983) 3 SCR 198.
[42] MP v. Mahalaxmi Fabric Mills Ltd., (1995) Supl.1 SCC 642.

Section 9(3) of the Mines and Minerals Act, 1957, was questioned. The court decided that there was no excessive delegation of powers. In this Act, the Central Government was given some powers to increase the rate of royalty regarding minerals.

6. EXCESSIVE DELEGATION AND POWER TO MAKE MODIFICATIONS

The Constitution itself delegates powers to make suitable modifications to the Act by Article 372.

Raj Narain Singh v. Chairman, Patna Administration Committee[43]

The validity of Section 3 (1)(f) of the Bihar and Orissa Act was challenged. Supreme Court, in this case, has drawn the boundaries and specified precisely is the extent of constitutional delegation and are essential functions of the legislative. The executive acted beyond the scope of its powers by making modifications.

7. EXCESSIVE DELEGATION CONCERNING THE INDIAN CONSTITUTION

In re Delhi Laws Act,[44] This case is also known Bible case for delegated legislation. There were two pee-existing acts and forms before the independence, viz. The Delhi Laws Act, 1912, Ajmer Merwara Act, 1947 and Part C State Act, 1950. In Delhi Law Act, 1912, the modification rights were given to the provincial government by virtue of Sec.7 of this Act. In the Ajmer Merwara Act of 1947, certain rights regarding the modifications in the official gazette by notification to the Central Government. Before independence, India was classified into three types of states namely. Part A, B, C. Delhi was in part C, which was under the full control of the Central Government without any specified Act. Thus, after independence, parliament created a Part C State Act law 1950. In this Act, most of the powers were given to Central Government regarding amendments and modifications. This Act was gone for the President's signature to become law. President gave the idea that this has been excessive delegation to the executive by the parliament because excessive rights have been given to the executive. President seeks Supreme Court advice under Article 143 of the Indian Constitution. The matter came to Supreme Court regarding the validity of Part C State Act, 1950.

Supreme Court observes all three acts, namely The Delhi Laws Act 1912, Ajmer Merwara Act, 1947 and Part C State Act, 1950. The main issue was whether the legislature could delegate its

[43] Raj Narain Singh v. Chairman, Patna Administration Committee, (1955) SCR 290.
[44] In re Delhi Laws Act, (1951) SCR 747.

powers to the executive or not? From the government's side, MC Setalvad contended that delegation is unavoidable, and it comes automatically with the law-making power, and there are no restrictions on delegation. The opponent lawyer M.C Chaterjee contended that the principle of Separation of Power had been adopted in India. It follows *delegata potestas non potest delegari,* which means that re-delegation of powers is not allowed because the legislature itself is the result of the delegation of people, and there should be a restriction on delegation. Supreme Court held that Sec.7 of the Delhi Law Act and Sec.2 of the Ajmer Merwara Act are both valid because the delegation is regarding modification and allowed. Some Part C State Laws Act provisions were invalid as they involved excessive delegation.

8. EXCESSIVE DELEGATION OF POWER TO REPEAL

Re Delhi Laws Act[45]

In this case, it was upheld that the authority to make repeal an existing act is an essential legislative function, and it cannot be delegated. This case is a leading example where the excessive delegation was held to be ultra vires.

AV Nachane v. India[46]

The validity of Section 48(2)(cc) of the Life Incorporation Council (Amendment) Act,1981 was challenged. The powers regarding making rules for the Act were given to the central government and upheld to be void on the grounds of excessive delegation.

9. EXCESSIVE DELEGATION AND POWER TO INCLUDE AND EXCLUDE.

Edward Mills Co v Ajmer[47]

The validity of the Minimum Wages Act 1951 was impeached and was held illegal. The central government was given certain powers to add a schedule by way of notification for fixing minimum wages for the industries by Section 27. The government was given the power to include or exclude industries that will fall or not fall under this specific Act.

Hamdard Dawakhana v India[48]

[45] Re Delhi Laws Act, (1951) SCR 747.
[46] AV Nachane v. India, (1982) 2 SCR 246.
[47] Edward Mills Co v. Ajmer, (1955) 1 SCR 735.
[48] Hamdard Dawakhana v. India, (1960) 2 SCR 671.

The validity of Section 3(d) Drugs and Magic Remedies Act was in question based on legislative power being excessively delegated. This Act has given several powers to the Central Government to carry out. The court upheld the validity as illegal on excessive delegation of its powers.

EXCESSIVE DELEGATION AND ARTICLE 14

The principle of delegated legislation can be challenged based on unreasonableness and arbitrariness. In several cases, the High Court has given the view that unreasonableness is not a basis for challenging delegated legislation. If there is arbitrariness presented in the delegated legislation, it can be challenged by Article 14. Any rule that cannot be there that forbids Article 14 and the rule made by the delegation should be approved by the parent act. In India, excessive delegation is ultra vires, and authorisation by the parent act is a must. In the matter of *Air India v. Nargesh Meerza,*[49] the regulation was held to be unconstitutional and contravening Article 14 because a rule was passed regarding the retirement of an air hostess in which after accomplishing the age of 35 years or getting first pregnancy or marriage within four years of service whichever is earlier the retirement will take place. Also, the regulation did not give certain rights in the increment of the age of retirement to the managing director, but this uncontrolled and unguided discretionary power was conferred to the managing director, which was declared unconstitutional.

If excessive delegation is subject to being arbitrary, then it can easily be assailed by Article 14. The Constitution does not talk about the delegation exactly. However, we can get somewhat ideas from Article 312. We can conclude that some delegation is unrestricted and unavoidable. In Article 312, it is given that Rajya Sabha has a new branch of All India Service with the majority votes. In the Sikkim v. Surendra Sharma Case[50], the court decided that termination of the service of the staff is unconstitutional by Article 14 and Article 16 if solely based on residential and not living in that locality. Constitution provides a view that delegation is permissible in a controlled and restricted manner. Powers of delegated legislation are dealt with within Article 312 of the Constitution, and it lies with the legislatures automatically. The unlimited delegation is impermissible, and the legislature cannot lose its complete control over the functions. Hence, the Constitutionality of excessively and unlimited delegation is void.

[49] Air India v. Nargesh Meerza, (1982) 1 SCR 438.
[50] Sikkim v. Surendra Sharma, (1994) 5 SCC 282.

RELEVANCY IN CONTEMPORARY TIMES: RECENT TRENDS

Delegated legislation is prevalent in several nations across the world. In India, the government neglected to engage with stakeholders before adopting the "Right to Information (Amendment) Act, 2019", further contributing to the controversy surrounding the Amendment. Its passage into law portends a dismal future for the fundamental ideals of oversight and accountability. In "*Bihar State Govt. Secondary School Teachers Assn. v. Ashok Kumar Sinha"*,[51] the judge noted that an administrative authority's judgement issued by the court could not be turned over by modifying its regulations. It would be an obstruction of justice. This ruling suggested that the judiciary would not allow excessive delegated legislation to be established. In another recent issue, the government sought to supervise rather than manage the publisher of news or current affairs content by announcing the "*Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021*" ("Intermediaries Rule 2021"), including over-the-top or OTT platforms. It also includes a due diligence process for social media intermediaries, who will be fined if they do not comply; thus, it suffers from excessive delegation. It has sparked several debates.

Furthermore, in *Hiralal P. Harsora v. Kusum Narottamdas Harsora*,[52] it was found that the legislative object might be deduced from the preamble, which states the Act's intended goal and purpose. According to current practice, only a tiny portion of overall legislation now emanates from the legislature. The executive acts as a delegate of the legislative and promulgates the majority of the law, which is referred to as "delegated legislation." In *Harvey v. The Minister for Social Welfare in the United States*,[53] the issue was what is known as a Henry VIII clause, which is a statutory provision that allows an administrative body to make delegated legislation that can amend existing legislation. Courts have held this form of delegated legislation to be unconstitutional, even though it does not create a new principle. This case does not involve any sort of delegated law.

Furthermore, in *Canada* there has been balancing trends in news between legislature and executive. *Wherever, in the U.K.*, where these matters are more highly advanced than under any other parliamentary democracy, the first two of these prerequisites are met by the Statutory Instruments Act, 1946, and by various Statutory Instruments Regulations made under that Act.

[51] Bihar State Govt. Secondary School Teachers Assn. v. Ashok Kumar Sinha, (2014) 7SCC 416.
[52] SLP (Civil) No. 9132 of 2015.
[53] 1989 WJSC-SC 1637.

In most cases, the legislature establishes legislation that covers broad ideas. Such as the COVID-19 pandemic, which has produced a global health catastrophe in our era and is the greatest challenge the globe has faced since WWII. This has served as a leading beacon of the Indian Constitution's delegated legislation.

ANALYSIS

Our Indian framework is designed to separate powers and legislature; the executive and judiciary have distinct and separate functions to perform. Though, a strict separation of power is not there. Our Indian Constitution distinguishes those functions and authorises the legislature as a law-making body. Certain powers are conferred upon the three organs of government, and they cannot be conferred on other institutions. The legislature works to frame laws and policies and mount them as decorum. Sometimes parliament remains overburdened, and over-pressure and delegation may happen. It is a kind of unavoidable situation. However, we can say delegation can be unavoidable to some extent. After that, it will be unconstitutional. Delegation should not be unlimited and excessive. The restrictions on delegation and how much delegation is allowed are not clearly stated anywhere. The ultimate authority lies in such matters with Supreme Court. Courts decide what type and extent of delegation it is on the factual basis of the matter. It is impracticable that the legislature will perform its all functions, and here is, the idea of delegation arises. The doctrine of excessive delegation carries out two goals- Firstly, the governance of democratic accountability is ensured in the laws and secondly, the court provides minimum delegation of the laws to the courts with some noticeable degree to held ultra vires. As we can say, there are two sides to a coin. Several disadvantages, advantages and risks are auxiliary to delegation. We can also assume that there is a need for delegation to some extent only. Excessive delegation and unlimited delegation are not at all required for the country. When parliament is overburdened, delegation plays a positive role, and the legislature gets help from the executives in law-making functions. Also, law building needs specific experience and skills in making a particular type of law, and we can say that executive can have a positive role in that. The emergent and necessary situations sometimes need legislation for the smooth and flexible functioning to cope with the slow law-making process, which requires practical application, discussions, etc. In the dynamically societal changing situations, delegated legislation sometimes supports when contingencies occur and the circumstances that were not anticipated occur. When sometimes any position arises in which technical assistance is required, and members of legislation cannot help in that matter, delegation turns out to be functional. There can be certain times when expert advice and clarifications are required, and

delegation is proved to be convenient in those circumstances. Without waiting for a new act to be passed by parliament, the government can make law through delegated powers. Time and resource-saving is the most significant advantage of delegation. Sometimes the position arises where the authorities to whom the powers have been delegated know the ground reality and can act according to that specific situation's needs.

The control of delegated legislation should not be affected and used appropriately. Sometimes excessive and uncontrolled delegations arise and make them unreasonable and arbitrary. We have Article 14 of the Indian Constitution to safeguard against such arbitrary and discriminatory delegations. When excessive and uncontrolled delegation arises, the court announces it as ultra vires. The bodies should not act beyond the limits of powers granted to them. The delegation should not be mala fide and not beyond the intention of parliament. The legislation will be void if the court declares that void.

CRITICISM:

There are several critical aspects of excessive delegations which are to be noticed.

- Overlapping of powers and responsibilities is one of the main criticisms of excessively delegated legislation. The control of the power of the legislature has also been decreased. The spirit of democracy would be harmed if the unelected people made a delegation.
- The encroachment of the executive in the area of the legislative's rulemaking powers. Also, sometimes the public may have difficulties when the authority makes the laws without much discussion and lack of debate.
- Parliamentary scrutiny is a must for the matters, and this can result in irregularities and deficiencies in the law because of these contingencies and unforeseen circumstances can occur.
- When the law constructing procedure is delegated, then it can be of absences of exposures and lack of experimentation. Sometimes, Political gain can also result from delegation and lead to arbitrary conclusions.
- Nowadays, Political parties sometimes force the law-making authorities to make the law of their choices.

- The principle of the power of separation is violated by excessive delegation. The powers in the delegation are neither systematic nor consistent. This can result in illogical and complex laws.
- The discretion level of the executive is to the fullest if there is unlimited delegation, which can result in discriminatory and adverse outcomes because the executive can use the responsibilities and function in whichever way they want.
- When delegation happens, the rights of law-making power from the newly elected members are taken away, and the power goes into the hands of unelected members. Thus, the legislation results in undemocratic procedures.

CONCLUSION

The concept of delegated legislation is best known in administrative law. However, we can see that there have been rare cases of excessive delegation in India during the last forty years. This topic is a very debatable issue because of its various applications. Unlimited or excessive delegation occurs when the powers are complete without any restrictions conferred to the executive by the legislatures. Courts apply this doctrine when the validity of any statute has been assailed due to delegated legislation and when it comes out that delegation is beyond the limit and excessive, the court can adjudge that as ultra vires. The delegation should have within the scope and too broad power not to be conferred on the executive. If the authority exceeds its power and executives start making laws, it will be known as excessive delegation because the legislature must make the laws.

The policy implementation is the duty of the executive. This research paper also discusses the significant Indian decisions regarding excessive delegation. The doctrine of separation prevails in India, and by its virtue, we can say that excessive delegation is unfavourable and harmful. The power of delegation must not be "unconfined and vagrant" and should not "run riot". There has been a need for delegated legislation and, on the other hand, criticism also. However, we can conclude that delegation to some extent, is reasonable and unavoidable and there is a need also, but such delegation should not be excessive and unlimited.

On the one hand, the excessiveness of power residing is more of a deficiency in the system and an invitation to danger. The Indian Constitution permits delegated legislation, and it subsists in the form of by-laws, rules, regulations etc. Our Indian mechanism of law building prefers delegation, and to avoid its arbitrary use, and for its smooth function in the administration

process, the constitutional validity of such laws is considered. The Constitution works as a safeguard and protection from the unlimited and biased delegation.

In emergency times, The ground of excessive delegation is of much use during the emergency times because the grounds for attacking the validity of the Act or law because Article 14 gives right to move to the court for enforcement of fundamental rights got suspended. Fundamental Rights are taken away in an emergency by the President. Article 19 and Article 14 automatically get suspended according to Article 359(1) and Article 358 of the Indian Constitution, and the excessive delegation works as a wall against government authoritarianism.

The central enigma is why is excessive delegation ultra vires? Several grounds to be looked at and considered as the description of law at hand, the applicability of the law along with the preamble is vital, the scheme of such law, and the background of the law. The nature itself of the excessive delegation held it as illicit. The delegation should not be offending any provisions of the Indian Constitution. It should remain discrimination-free. To ensure the constitutional validity of such a statute, Article 14 and Article 19 plays the most significant role. Those laws are to be declared invalid by their character itself, which are prejudiced against anyone without authorisation. If we see delegation globally, we can say that it is permissible in some countries and others, it is circumscribed. If the country's Constitution remains silent, then the court is the ultimate authority to decide its validity that to what extent it is permissible. In the USA, stringent rules are applied so that power delegated power has remained in safe hands and cannot be misused.

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Ensuring Compliance in Cyberspace: The Need for Robust Cyber Law Enforcement

Upasana Priya[54]

ABSTARCT

Cyberspace has become an integral facet of modern world which makes robust enforcement of cyber law, the need of the hour. An individual's privacy and security in the digital realm can only be protected by cyber law enforcement which ensures the compliance with laws, standards and regulations designed to protect them. In that context, this Article examines the lacunae in the implementation of cyber laws, the challenges faced in the enforcement agencies including cross-border cyber frauds. It aims to critically analyse the reasons for the ineffective implementation. The Landmark cases are also discussed for throwing light on it. This Article also suggests proactive measures such as creating awareness regarding cyber threats, educating about risks and strengthening the legal framework for the prosecution of cybercriminals. A secure and resilient digital world can be built for all by addressing the challenges and leveraging emerging technologies.

Keywords: Cyber Space, Privacy, Cyber Law, Cyber Fraud.

Introduction

The term Cyber Law has, per se, not been defined in any Indian statute be in Information Technology Act, 2000 or the Indian Penal Code, 1860 (These are some of the legislations governing Cyber Law in India). As a matter of fact, the wide connotations of the field of law make it nearly impossible to contain it in a single definition.

With the increasing reliance on the Internet, there arose a need to regulate the space and form stringent laws and policies to keep criminal activities at bay. In the Indian context, none the

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existing legislation was having the ability to incorporate these restrictions as the laws were formulated keeping in mind the socio-economic conditions of the past and could not fulfill the contemporary requirements. This gap in legislation, which was largely unforeseen at the time of enactment of older legislations, needed to be filled in and that was done with the help of Information Technology Act, 2000 (*hereinafter* "IT Act, 2000") and the Rules and regulations therein.[55] With the introduction of this act, a supporting legal infrastructure was aimed to be provided to the cyberspace.

Governing Legislations

The Ministry of Electronics & Information Technology is the governing body as far as the specific legislations regarding the cyberspace are concerned. The primary legislation dealing with regulation of cyberspace is the *Information Technology Act, 2000* and the subsequent amendments including Amendment Act of 2008. Various notifications regarding the IT Act, 2000 have been passed by the ministry clarifying various aspects mentioned in the Act.[56] In addition to that, various other legislations like *Indian Penal Code, 1860; Indian Evidence Act, 1872* etc. also have provisions that regulate the cyber laws in India. I shall not dwell into the intricacies of the provisions for the purpose of this paper.

In addition to the various statutes mentioned above, the ministry, from time to time, by way of press releases, office memorandum or various protocols, keeps incorporating additional aspects in the realm of cyber law. Some of the major ones are enlisted below:

In May 2011, in a press release by the Press Information Bureau, Ministry of Communications & Information Technology regarding exemption from liability for hosting third party information: diligence to be observed under Intermediary Guidelines Rules. This was regarding the Rules notified under Section 79 pertaining to liability of intermediaries under the IT Act, 2000.[57]

In 2015, '*National Encryption Policy'* was proposed to be set up to ensure secure transactions in Cyber Space for individuals, businesses and Government. A draft was prepared on a High

[55] Information Technology (Certifying Authorities) Rules, 2000; Information Technology (Security Procedure) Rules, 2004; Information Technology (Certifying Authority) Regulations, 2001.
[56] All major notifications available at https://www.meity.gov.in/content/notifications.
[57] Available at https://www.meity.gov.in/writereaddata/files/PressNote_25811.pdf.

Level Expert Committee's recommendations and put up on the website of DeitY for public comments. However, taking note of certain ambiguities, it was withdrawn.[58]

On 18th April 2017, Ministry of Electronics & Information Technology's Cyber Law and e-security division passed order regarding measures to curb Online Child Sexual Abuse Material (CSAM) to contain the spread of such material.[59]

In July 2017, the Ministry of Electronics & Information Technology issued an office memorandum regarding constitution of a committee of experts to deliberate on a data protection framework in India wherein an expert committee was sought to be formulated.[60]

The most recent of the legislations to be considered is regarding the Aarogya Setu App envisaged in the *Aarogya Setu Data Access and Knowledge Sharing Protocol, 2020*.[61] The protocol deals was passed to ensure secure collection of data by the Aarogya Setu mobile application, protection of personal data of individuals, and the efficient use and sharing of personal and non-personal data for mitigation and redressal of the COVID-19 pandemic.

On 25th February, 2021, the *Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021* were passed by Ministry of Electronics and Information Technology (MeitY) in order to ensure an Open, Safe & Trusted Internet and accountability of intermediaries including the social media intermediaries to users. These Rules prescribe the due diligence to be followed by all intermediaries as well as the additional due diligence to be followed by significant social media intermediaries. The Rules also provide guidelines to be followed by publishers of news & current affairs and also online curated content providers. The Rules have two segments:

1. Intermediary Guidelines administered by MeitY.
2. Digital Media Ethics Code administered by the Ministry of Information & Broadcasting (MIB) in line with the distribution of subjects under the Government of India (Allocation of Business Rules), 1961.

[58] Available at https://www.meity.gov.in/writereaddata/files/national-encryption-policy-govt_0.pdf.
[59] Available at https://www.meity.gov.in/writereaddata/files/Order%20regarding%20online%20CSAM.pdf.
[60] Available at https://www.meity.gov.in/writereaddata/files/MeitY_constitution_Expert_Committee_31.07.2017.pdf.
[61] Available at https://www.meity.gov.in/writereaddata/files/Aarogya_Setu_data_access_knowledge_Protocol.pdf.

Landmark Precedents

One of the oldest cases regarding cyber law in the history of world was the infamous case of *R.* v. *Thompson*[62] wherein the perpetrators in the US Air force and NASA were convicted of cyber-crime and fraud. This cyber theft involved stealing of sensitive information and even embezzlement of money from some Kuwait bank accounts to their own English bank accounts.

India's first case dealing with cyber-crimes came only in 1999 with the case of *Yahoo, Inc.* v. *Akash Arora.*[63] In this case, Yahoo! demanded a permanent injunction against the respondents who were using the website "yahooindia.com". The court, while upholding the intellectual property rights of Yahoo, held that such a use creates deception among the customers and the party was held liable. This judgment was reiterated in the case of *Rediff Communications Ltd.* v. *Cyberbooth.*[64] In Yahoo!, in another case regarding posting of defamatory, offensive and threatening messages on a group, the court convicted the accused under Section 67 of the IT Act, 2000.[65]

The Case of *Syed Asifuddin and Ors.* v. *The State of AP & Ors.*[66] was regarding the manipulation and stealing of programming code of cell phone digital handset of Reliance Infocomm. The devices were specifically programmed by TATA Indicom for Reliance. Misusing the same, certain individuals altered the code and manipulated the same with the crux of providing better deal to the customers which would have caused losses to both companies. In technical terms, ESN of the code was altered and that amounted to a strict hit on Section 65 of the IT Act, 2000 and they were held liable.

In *State of Tamil Nadu* v. *Suhas Katti*,[67] a divorcee woman was assaulted by way of obscene and inappropriate messages on yahoo message groups and false e-mails were sent impersonating her. In one of its first convictions in the country, the accused was held liable under Section 67 of the IT Act, 2000.

With regarding to publishing of obscene material online punishable under Section 67 of the IT Act, 2000, the definition was also extended to considering transmission as also a part of

[62] (1984) 79 Cr App R 191.
[63] (1999) 19 PTC 229 (Delhi).
[64] AIR 2000 Bom 27.
[65] Tamil Nadu v. Suhas Katti, (2004) Cr. Comp 4680.
[66] 2005 Cri LJ 4314.
[67] C No. 4680 of 2004.

publication in a manner. This was established by a case where in a private MMS was put on sale by the website "Baazee.com" and was bought by several consumers before it was put down. Even though there was no direct publication, Section 67 of the IT Act, 2000 was attracted.[68]

The issue of impersonation, as mentioned in a prior case as well, is also one of the most problematic issue as far as cyber-crimes are concerned. In an instance, a woman's personal contact details were disclosed on the public forum by the defendant while impersonating her. After receiving threatening and inappropriate calls, she filed in a complaint. The defendant was booked under Section 509 of the Indian Penal Code, 1860.[69]

The most well-known and landmark judgment in the realm of cyber law is undeniably the case of *Shreya Singhal* v. *Union of India*,[70] wherein the Hon'ble Supreme Court held Section 66A of the IT Act, 2000 as unconstitutional. It was held as violative of Article 19 of the Constitution and not falling under reasonable restrictions as specified in Article 19(2) as it was overly broad and vague.

Problems in Effective and Efficient enforcement

Like any other newly formed legislation, there is a major problem in proper implementation and subsequent enforcement of the laws due to the lack of awareness or issues regarding acceptance in the society to name a few. In the case of cyber laws, the problem becomes multifarious due to the involvement of technicalities that the justice system of the country from the investigative agencies to the judges are not well versed with at the instance. Some of the issues regarding enforcement are listed below-

1. **Jurisdictional Issue**: Since the realm of cyberspace is not restricted to a particular territory, there arises a major and foremost issue as to jurisdiction. Different countries in the world have varied laws and treatment as far as cyber law is concerned depending on how developed the country is, what kind of resources it possesses and the like, and there is not much standardization.

[68] Avnish Bajaj vs. State (N.C.T.) of Delhi, (2005) 3 CompLJ 364 Del.
[69] Manish Kathuria v. Ritu Kohli (2001)
[70] (2015) 5 SCC 1.

2. **Lack of Awareness:** A major issue as far as cyberspace is concerned is the issue of lack of awareness regarding the same in general public. The realm is a relatively new aspect of law, and that becomes an impediment in the enforcement. A lack of awareness results in less reporting of cases and ultimately reduced redressal.

3. **Lack of proper technical proficiency of the implementing authorities** – Due to the dynamic nature of cyberspace, there is a problem of technical know-how among the investigating agencies and also the adjudicatory bodies. The courts are not fully equipped and even in specialized tribunals; there is a dearth of specialized knowledge.

4. **Complicated and Expensive** – Building on to the previous point, the complicacy in the area makes it very difficult and even expensive to enforce due to the need for specialized technical understanding of complex aspects. A separate infrastructure and expert witnesses are required which complicates things and can be pricey.

5. **Gaps in legislation** – Due to various gaps in legislation, there are many loopholes in the legislations that are very easy to misuse. This problem is not confined to cyber law but almost every newly made statute suffers from this difficulty and can only be cured by way of incessant efforts by the authorities.

Way Forward and Suggestive Analysis

As far as the preventive measures are concerned, following are some of the measures that can prove to be effective in proper enforcement –

1. **Consumer Education**: Cyber law is by far one of the more ill-informed areas of law due to multifarious reasons such as lack of awareness and know how among the older generation and also due to the fact that it is a very recent concept that took shape only a few years back. Hence, the most important tool for its mitigation also commences at consumer awareness. There is a dire and urgent need to make the public aware of the modes and new ways of digital frauds. This can help mitigate the problem at the root level and prevent it from expanding.
2. **Protection by corporate :** Another basic, yet effective method is the adoption of preventive measures by the organizations themselves in the form of warnings, ensuring proper authentications and many more tools. Having huge resources and technical know-how, the corporate organizations can easily warn the consumer of the risks involved. Some of these are very common and experienced by almost every consumer. Some examples being-

- Sending regular messages about the mode of asking for OTPs.
- Warning phrases before the start of a consumer complaint call.
- An effective e-security framework of an organization can go a very long way in the combat of problem effectively and efficiently.

3. Data storage and protection measures: Building up to that, it is also imperative that the user data be a restricted access data and only the essential personnel be allowed to access the data. Additionally, as far as possible, the data ought to be encrypted before any processing or before it falling into the hands of any employee or a third party organization for processing.

4. Non-technical information to consumer: In line with the previous point, it is an important aspect that the information presented to the affected party should be in clear, unambiguous terms. The realm of cyberspace is fairly technical there is a need to simplify the rights of the consumers and stakeholders. For instance, the Terms and Conditions, Employee contracts, briefings etc. on this aspect should be made uncomplicated.

5. Fast and effective redressal mechanism: In this fast moving world, crime is multiplying at a swift pace and redressal mechanisms ought to move at a much faster rate. Also, especially in terms of cyber-crimes, the only way to beat it is to be ahead of it. Cyber security modules must update themselves in order to keep pace with the new methods of attack technology.

Conclusion

With the advent of a digital culture in India and the world, there is a need to make requisite amendments to the laws relating to the field of law. To put simply, crime has found a new interface. As the dependence on technology increases, an increase in cyber-crimes is an innate consequence. Here, the essential question that arises is that how much we are willing to put ourselves at risk for the sake of convenience and ease. After a careful research and understanding of the existing legal provisions with regard to cyber law, it is more than clear that the legislation is insufficient, at best. There are multitudes of gaps that need to be fixed by way of expert and technical law making. However, an important aspect that is to be kept in mind is that due to the nature of cyberspace, it is highly dicey that there can ever be a fool proof method or legislation to completely rule out any such act. The important thing is that law needs to keep evolving as an equal rate as the increment in the intensity and magnitude of the crime.

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The Legal Status of Climate Change Refugees

Vaishnavi Rawat[71]

ABSTARCT

Today, we are all aware that the climate change disaster we are now experiencing is the product of human activity, yet no significant action has been made to address this problem. However, we cannot dispute that certain actions have been made in recent years, but these are insufficient to prevent the issue of climate change from becoming a disaster. Humans have been forced to abandon their homes as a result of the gradual expansion of this issue's reach through time to the point where it has spread to every continent. The term "climate refugees" is not generally or extensively recognised in the international community. As a result, it is not an issue that can be handled by reaching a simple agreement among those involved. The climate change refugee instrument should be unique, even though it should reference current legal frameworks. The "UNFCCC" (which is neither people-centered nor remedial in character) and the Refugee Convention (which lacks an environmental mandate and suitable technical tools) both have limitations as forums for a potential climate change refugee protocol. Instead, a convention to lessen the issue should emerge outside of those systems, drawing on useful clauses but modifying them to fit the needs of a climate change refugee situation. This Article examines thestatus of Climate Change Refugees.

Keywords: Climate Change refugees, UNFCC, Refugee Convention.

INTRODUCTION

Climate change is a human catastrophe that we can no longer deny; the effects of climate change are now more visible than ever. There is little doubt that we, as humans, have failed to provide the mother earth with the love and care it needed. As a result of deteriorating living circumstances, climate change has resulted in the displacement of individuals from

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their homes. Due to climate change and natural calamities, those compelled to cross international boundaries require international protection. Refugee law and human rights law consequently play an essential role in this field.

"A refugee is a person who has crossed an international boundary out of a well-founded fear of persecution on account of their race, religion, nationality, membership in a specific social group, or political viewpoint" (1951 Convention relating to the Status of Refugees). However, at this point in time, when climate change has worsened, there is no legally recognised definition of climate change refugees. They have been poorly disregarded by international treaties and legal systems.

For our purposes, we may define climate change refugees as those who are displaced within their own country, as climate change often causes internal displacement prior to displacing people over international boundaries.

Lester Brown was among the first to notice persons who had fled their homes as a result of climate change; he dubbed them "environmental refugees."

Today, we are all aware that the climate change disaster we are now experiencing is the product of human activity, yet no significant action has been made to address this problem. However, we cannot dispute that certain actions have been made in recent years, but these are insufficient to prevent the issue of climate change from becoming a disaster. Humans have been forced to abandon their homes as a result of the gradual expansion of this issue's reach through time to the point where it has spread to every continent.

"We must invest now in readiness in order to decrease future protection demands and prevent more climate-related migration. It is not a choice to wait for calamity to hit."

- High Commissioner for UN Refugees Filippo Grandi

In light of the preceding remark, the researcher has attempted to take into account the response of the global society as a whole to climate change refugees. Efforts have also been made to identify a realistic and effective solution for the improvement of the climate change refugees' existing position. A separate convention addressing both the preventative and remedial aspects of the issue of climate change refugees is also necessary, according to the researcher.

EMERGENCE OF CLIMATE CHANGE REFUGEES

Long before the year 1990, the Intergovernmental Panel on Climatic Change (IPCC) made the prognostication that there would be a climate catastrophe that would influence the human race

in such a way that would lead to the widespread relocation of populations from their homes. According to the Intergovernmental Panel on Climate Change (IPCC), which published its most recent assessment in 2014, "warming in the climate system is unambiguous and human activity is quite likely to have been the major cause of the observed warming since the middle of the twentieth century." The issue at hand is not simply the relocation of people from one area to another but also the quantity of people moving and the rate at which they are moving. Those who are migrating do so since it has become their last remaining option for ensuring their own existence.

This trend started in the 21st century, when people all over the globe were preoccupied with the issue of refugees and the numerous types of refugees that emerged for a variety of causes. During this time period, people also began to recognise environmental refugees. In 1985, El Hinnawi from the UNEP provided one of the earliest definitions of environmental refugees. He qualified these migrants as people who are affected by any kind of environmental disturbance and, as a result, are forced to leave their habitats, putting their lives in jeopardy. This definition was one of the first definitions regarding environmental refugees.

The developing nations are the most negatively affected by the displacement of climate change refugees since these governments are unable to provide sufficient food and resources for their own inhabitants, let alone for the climate change refugees. In spite of the fact that developing countries are also responsible for the climate crisis, it is impossible to deny the fact that the current predicament calls for more long-term and effective solutions, especially when taking into account the ability of developing countries to host displaced people.

This threat is magnified for areas with fewer and smaller islands. One such example is the island nation of Kiribati, which is not only one of the countries with the lowest height in the globe but also a place where the legend of Atlantis could really be genuine. The island Republic of Kiribati, which spans the equator and comprises of 32 coral atolls and one island, is located in the middle of the Pacific Ocean, exactly midway between the continents of Australia and Hawaii. The atolls rise to a maximum of three to four metres above sea level, which is higher than the majority of the state, which is just one to two metres above sea level. The ability of the land to support human settlement is being put to the test by climate change, which is manifesting itself in the form of more frequent storm surges, coastal erosion, and heightened salinity. Climate experts are in agreement that the sea level will only continue to rise near Kiribati due to the fact that the rate of sea level rise in the western Pacific is

four times faster than the average for the entire planet. According to studies conducted by the World Bank, if new laws are not put into place, the majority of Tarawa would be flooded.[72]

A man from Kiribati took his claim to be a "climate change refugee" all the way to the High Court of New Zealand and the Court of Appeal of New Zealand in the case known as Ioane Teitiota, Chief Executive of the Ministry of Business Innovation and Employment. Teitiota's application was the first to reach these two appellate tribunals, despite the fact that other immigrants had made claims that were comparable in the past.

If one discusses India specifically, then it is estimated that there would be around 20 million climate refugees looking for sanctuary in India in the next years if the current trend of climate change is allowed to continue.[73]

WHO ARE CLIMATE CHANGE REFUGEES?

An individual who is forced to flee his home and to relocate temporarily or permanently across a national boundary as a result of a sudden or gradual environmental disruption that is consistent with climate change and to which humans more likely than not contributed may be defined as a climate change refugee. This definition may be used to describe an individual who is a climate change refugee. People who are forced to leave their homes and settle someplace else in quest of a new place to call home should also be included in this definition since they are also compelled to leave the nation in which they were born in order to find a new place to call home. In the end, all of the people who have been displaced as a result of the effects of climate change are deserving of protection and assistance on humanitarian grounds, regardless of whether or not they are now living in another country.

This term may appear to be similar to the definition of refugees that was established in the Refugee Convention of 1951; however, the Refugee Convention of 1951 was updated in 1967 to include climate change refugees, therefore this definition is more accurate. For a definition that is both more exact and more understandable, we can turn to the writers listed below. –

[72] A NATION GOING UNDER: LEGAL PROTECTION FOR "CLIMATE CHANGE REFUGEES" XING-YIN Ni*DATE DOWNLOADED: Mon Sep 26 14:12:52 2022 SOURCE: Content Downloaded from Hein Online

[73] See Teitiota, NZHC 3125, at 45; cf Tara Brady, World's First Climate Change Refugee: Pacific Islander Asks New Zealand for Asylum as He Claims His Home Will Be Engulfed BY Rising Seas, DAILY MAIL (Oct. 17, 2013), http://www.dailymail.co.uknews/article-2464282/Climatechange-refugee-Pacific- Islander-asks-New-Zealand-asylum.html, archived at http://perna.cc/8HTF3UWM (describing Teitiota's appeal to the High Court as a claim to be the world's first climate change refugee).

In 2007, *'Biermann and Boas'* published a working paper in which they defined a climate change refugee and argued for a global governance mechanism to safeguard climate refugees within the context of the UN Framework Convention on Climate Change (UNFCCC). They defined the term as *"people who are forced to leave their habitats, either immediately or in the near future, as a result of sudden or gradual alterations in their natural environment related to at least one of three impacts of climate change: sea-level rise, extreme weather events, and drought and water scarcity."* Sea-level rise is one of the three impacts of climate change.[74]

However, the contribution made by *'Essam El-Hinnawi'*, who was the first person to propose the definition, is not something that should be overlooked. He did not use the term "climate change refugees," but rather defined environmental refugees as "those people who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardised their existence and/or seriously affected the quality of their life (sic]." He did not use the term "climate change refugees," but rather defined environmental refugees as "those people who have been forced to leave their traditional habitat, temporarily or permanently, because by "environmental disturbance".[75]

People who are unable to make a living in their home countries due to environmental factors such as drought, soil erosion, desertification, deforestation, and other environmental issues, as well as the associated problems of population pressures and extreme poverty, are considered to be internally displaced persons (IDPs). For a definition that is more recent but otherwise comparable, we can refer to Myers' definition. He defines IDPs as "those people who can no longer gain a secure livelihood in their home countries." These people are so desperate that they believe they have no choice but to try to find safety somewhere else, regardless of how dangerous the endeavour may be. Many of them have been forced to flee their own nations, but others are internally displaced. However, all of them have left their countries of origin on a semi-permanent or perhaps permanent basis, with little possibility of returning in the foreseeable future.

[74] Frank Biermann & Ingrid Boas, Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees 8 (Global Governance Project, Global Governance Working Paper No. 33, 2007) (calling for a protocol to the UNFCCC to deal with climate change displacement);
[75] EssAm EL-HINNAWI, ENVIRONMENTAL Refugees 4 (1985); Diane C. Bates, Environmental Refugees? Classifying Human Migration Caused by Environmental Changes

After considering all of the aforementioned criteria, one can come to the conclusion that persons who have been compelled to leave their homes as a result of an environmental or climate catastrophe are considered to be climate change refugees. These include both persons who have voluntarily fled and others who have been compelled to depart for their own safety. Both groups are included below. In addition, the severity of the damage produced by the environmental catastrophe will determine whether their uprooting or relocation would be temporary or permanent.

In the present day, we are able to discover a variety of definitions, including those that have been offered above. Nevertheless, is identifying the refugees caused by climate change really useful in finding a solution to this worldwide problem? Because this has evidently kicked off some conversations on this topic in many parts of the world, defining it could be the first step towards acknowledging it, and then ideally finding a solution to it.

In addition, let's investigate whether or not the drafting of laws in the form of treaties or conventions is contributing in any way to finding a solution to this problem.

ARE LAWS THE SOLUTION?

An advantage of having a separate climate change refugee convention is that it would allow for the consolidation of several regulations into a single specialised instrument. The basic difficulties produced by the climate change refugee crisis will be addressed by a bespoke treaty, which will also seal the present legal gap with the degree of specificity that governments and communities demand 26°. The problem extends into a variety of subfields, including those pertaining to human rights and the environment. Through its foundational components, the proposed convention would bring together all of these different aspects and concepts of humanitarian aid. The problem of climate change refugees not only encourages such connections but also benefits from making them explicit and prominent in a new treaty. Historically, these three subjects—human rights, humanitarian aid, and international environmental law—haven't been combined into a single convention. However, the issue of climate change refugees not only encourages such connections but also benefits from making them explicit and prominent in a new treaty. Because the nature of the issue encompasses both individual rights and state-to-state obligations, a new treaty should draw from legal frameworks that include both vertical responsibilities (i.e., between governments and communities, as under the human rights system) and horizontal obligations. Vertical responsibilities refer to the responsibilities that exist between governments and

communities, while horizontal responsibilities refer to the obligations that exist between states (i.e., between states, as under the international environmental regime). It is likely that either a “Refugee Convention 62" or a "UNFCCC protocol" would result in one set of obligations being subsumed under the other; however, a new convention presents the best opportunity for these sets of obligations to receive treatment that is balanced, rather than having one set of obligations subsume the other. As was shown in Part IV's analysis of the fundamental components of the climate change refugee instrument, a new treaty also maximises the freedom to create particular instruments that draw on different disciplines. This was done in order to combat the effects of climate change on refugees. An independent convention, for instance, ought to make improvements to the current refugee framework and employ models of international environmental law for finance methods, international collaboration, and shared state accountability. It should look to refugee law, which already has powerful corrective measures, humanitarian underpinnings, and rights for individuals who are impacted, in order to assist it overcome the limited state emphasis of the environmental system. Taking such an interdisciplinary approach is necessary in order to solve an issue that affects a wide range of people, and it is most likely to happen within the context of the freedom offered by an autonomous convention.

To begin, the term “climate refugees” is not generally or extensively recognised in the international community. As a result, it is not an issue that can be handled by reaching a simple agreement among those involved. Both the International Dialogue on Migration in 2011 and the most recent approval of the Global Compact for Safe, Orderly, and Regular Migration highlight the protracted and complicated nature of the process of creating conventions. A further issue is that, for the most part, there is no mobility of the climate within the region. Thirdly, there is the concern that enlarging the scope of the Refugee Convention from 1951 might be detrimental to the status of those who have already been given refugee status. In the context of migration or relocation, it is vital to consider whether or not environmental or climatic considerations should be ignored.

CONCLUSION

Regarding the developing issue of climate change refugees, there is a gap in the global legal and policy framework. Tens of millions or possibly hundreds of millions of people may evacuate their homes as a result of climate change during the course of the twenty-first century, bringing the problem to crisis levels. For humanitarian and logistical reasons, a global reaction is

required in the face of potential displacement on this scale. Furthermore, the international community must assume responsibility for reducing the harm to which it has contributed given the connection between global human activity and emissions and climate change. The best course of action is to create a new piece of legislation that has been carefully drafted to address the issue of climate change refugees. For people forced to flee their nations due to climate change, it should ensure that their human rights are protected and that they receive relief. It should distribute the responsibility for delivering such aid among the international community and the affected nations. It should create administrative organisations, such as a global fund, a coordinating agency, and a group of scientific specialists, to carry out the instrument. The climate change refugee instrument should be unique, even though it should reference current legal frameworks. The "UNFCCC" (which is neither people-cantered nor remedial in character) and the Refugee Convention (which lacks an environmental mandate and suitable technical tools) both have limitations as forums for a potential climate change refugee protocol. Instead, a convention to lessen the issue should emerge outside of those systems, drawing on useful clauses but modifying them to fit the needs of a climate change refugee situation. The Oslo Process, the most recent instance of fruitful discussions for a standalone convention, resulted in the signing of a ban on cluster munitions by 96 governments as of this writing in December 2008. 2 w° The Oslo Process and its complete treaty illustrate the strength and promise of this strategy for creating international law, even if they deal with a different humanitarian issue. This model should be followed by those worried about the consequences of climate-induced migration and the treatment of climate change refugees. They ought to work to make the climate change refugee convention the following such success tale.

While certain countries have taken individual steps in their respective capacities such as the "African Union Convention for the Protection and Assistance of Internally Displaced Persons, 2009" that recognized natural factors of climate as a reason for displacement and provides protection thereof, or the "Swedish Aliens Act 2005" that grants asylum to the persons displaced due to an environmental disaster yet, internationally the term has not been given its requisite importance.

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The Notion of Green Federalism and Environmental Justice in India: An Analytical Study

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ABSTARCT

In this modern age of science the protection of environment is one of the most cardinal aspects towards the betterment of ecological equilibrium of this universe. The progressive development of the environmental jurisprudence is the utmost required by the State as well as the Central legislators and this can only be possible when there is an existence of co-operative federalism. Therefore, the modern legislative era highly demands the principle of green federalism in a co-operative manner where State and Central philanthropically adopt an efficient step to protect our mother environment. The promotional principle of the green federalism also must be pioneered by the interpretative approach of the judiciary. The role of judiciary is also equally considered as the most cardinal aspect in the process of establishing the environmental justice because, the constitutional legislative mandate castes a special duty upon the State and Central through an amicable legislative relations in this regard under the strict judicial supervision and judicial creativity.

Keywords: Environmental Jurisprudence, Co-operative federalism, Green federalism, Role of Judiciary, Judicial creativity

Introduction

In a constitutional democracy the essence of federalism is considered as the touch-stone to establish an ideal state. The Indian democratic system being the largest democracy in the world the inter-relationship between the Central Government and the Regional Government is a unique constitutional equilibrium. In a federal constitution there must be a strong presence of theoretical aspect of the separation of powers among the various organs of the government.

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The uniform federal relationship between the two set of governmental mechanism are the genesis of the true constitutionalism. From the close proximity of Article 50 of the Constitution of India it is crystal clear that there is a separation of powers among the various organs of the government viz. Legislature, Executive and the Judiciary. In a federal constitution the judiciary is playing the most cardinal role in the procedure of protecting the constitution and the rights of the common people. It is also acting as the guardian of the constitution. The judiciary is also playing the most pivotal role in the process of mitigating the legislative disputes between the Centre and the State. Hence, it may be stated that, in a federal structure the judiciary is the life-blood of the vibrant democracy towards establishing an ideal state with a strong base of utopian philosophy. In the present day the protection of the environment is one of the pivotal concerns at the world wide because the right to get pollution free environment is the *sine-qua-non*e of the environmental justice. The right to get pollution free environment as well as purification of environment also very mush inherent tour ancient texts. Hence, in the words of Rig-Veda it may be stated that "***madhu vata rtayate madhu ksaranti sindhavah; madhvirnah santvosadhih***"[77] which narrates that the mother environment provides us the eternal bliss to live our life. Therefore, the principle of green federalism is not only to be adopted for the protection of the environment but also to be ensured the protection of the living creatures in regard to the promotional values of the Rig-Veda shloka "***tasmat yajnat sarvahutah samvrtan prsadajyan pasuntansakre vayabyanaranyan gramyasca ye***"[78] which indicates that, every living creature has its own environment and which also contributes in forming an unique environment of this universe.

Concept of Green Federalism and the International Perspective

In a democratic system the positive essence of federalism is one of the paramount features which make the Central and the State government to work in a co-operative manner. In the present day the protection of environment is one of the primary concerns of all most all the countries across the globe. Therefore, there should be a proper uniformity between the central and the regional government in the process of protecting the environment as well as the environmental rights of the citizen by implementing suitable and appropriate legislation. The concept of green- federalism can be achieved through the effective mode of the co-operative

[77] See Rig-Veda, 1/90/6 [*c.f.* https://tfi-store.com/sanskrit-shlokas-on-nature/ (Accessed on 03/05/2022)]

[78] See Rig-Veda, 10/90/8 c.f.https://blog.ucbmsh.org/department/environmental-services-evs-department/protection-of-environment-ethics-in-vedas-shloka (Accessed on 03/05/2022)

federalism. The higher degree of the industrialization, urbanization is genuinely hampering the ecological imbalances. Therefore, the need of green federalism becomes very much essential in order to promote the philanthropic spirit of sustainable development. So, it is the collective duty of both the set of government to fight against the ecological imbalances and the environmental crisis for the protection of the common people and the Mother Nature. Etymologically, the concept of green- federalism signifies the edictal role and the responsibilities of different units of government in the protection of environment within the strict supervision of legislative and administrative boundary. The procedural acceptability of environmental-federalism at the various countries at the worldwide at their constitution may be summarized in the following manner:

i. ***Section 20***[79] of the Constitution of the Federal Republic of Nigeria castes a duty upon the state to improve and protect the environment as well as the state should also protect the air, water, land, forest and the wild life of the state of Nigeria.

ii. ***Article 41***[80] of the Constitution of Argentina 1853 (Reinstated in 1983) provides that:

- ✓ All the individuals have the right of enjoyment of the right to pollution free and healthful environment for the human development as well as the individuals also have the prime duty to protect the environment;

- ✓ It must be the priority obligation to repair the environmental damage in the canopy of the effective legislative framework;

[79] See *Article 20* of The *Constitution of the Federal Republic of Nigeria, 1999*: "The State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria".

[80]*See Article 41 of The Constitution of Argentina 1853 (Reinstated in 1983)*: "All inhabitants enjoy the right to a healthful, balanced environment fit for human development, so that productive activities satisfy current needs without compromising those of future generations, and have the duty to preserve the environment. Environmental damage shall generate as a priority the obligation to repair it under the terms that the law shall establish.

The authorities shall provide for the protection of this right, for the rational use of natural resources, for the preservation of the natural and cultural patrimony and of biological diversity, and for information and education on the environment.

It falls to the Nation to dictate laws containing a minimum budget [necessary] for protecting the environment, and to the Provinces [to dictate] those laws necessary to complement the National laws, without such laws altering local jurisdictional [authority].

The entry into the National territory of dangerous or potentially dangerous wastes and of radioactive materials is prohibited".

- ✓ The appropriate authorities must also provide the information and education on the environment protection, the right for reasonable or rational use of natural resources and the biological diversity;
- ✓ It is also the duty of the Nation to implement and dictate suitable laws on the matter of protection of environment and the provinces are also need to complement the National laws in the respective subject matter as well;

iii. By virtue of ***Article 23***[81] of the Federal Republic of Brazil, 1988, the Union, the State, the Federal District and the Municipalities have the common power of enacting the legislation in regard to protect the environment and fight against pollution as well as to preserve the forest, fauna and flora.

iv. ***Article 23***[82] of the Federal Republic of Brazil, 1988 also narrates that the Union Government, the State Government, the Federal District and the Municipalities have the concurrent power to enact the law in regard to the subject of forest, hunting, fishing, fauna, preservation of nature, natural resources etc. as well as the environmental protection and control of pollution.

v. ***Schedule 4***, ***PART A*** of the Constitution for the Republic of South Africa, 1996, enumerates for the concurrent jurisdiction of National and Provincial government to legislate on the subject in regard to the matter of environment.

vi. ***Article 24***[83] of the Constitution for the Republic of South Africa, 1996 provides that, every individual must have the following rights:

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[81] See *Article 23 of the Federal Constitution of Brazil, 1988*: "protect the environment and combat pollution in any of its forms" (Entry VI) and "preserve the forests, fauna and flora" (Entry VII).

[82] See *Article 24 of the Federal Constitution of Brazil, 1988*: "forests, hunting, fishing, fauna, and preservation of nature, defense of the soil and natural resources, protection of the environment and pollution control;" (Entry VI).

[83] *See Article 24 of the Constitution for the Republic of South Africa, 1996*: Environment:
Everyone has the right:

a. to an environment that is not harmful to their health or wellbeing; and
b. to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that—
    - **i.** prevent pollution and ecological degradation;
    - **ii.** promote conservation; and

a. Right to get healthy environment;

b. Right to protection of the mother environment through the appropriate legislation in regard to:

- The prevention of pollution and ecological degradation;
- The promotion of the conservation;
- To ensure and achieve the ecologically sustainable development as well as to secure the promotion of justifiable social and economic development;

vii. ***Article 74(1)***[84] of the Constitution of Switzerland, 1999 enables that the Confederation must legislate on the subject of protection of natural environment against damage or nuisance.

viii. ***Article 77(2)***[85] of the Constitution of Switzerland, 1999 also enables the Confederation to legislate on the protection and conservation of forests;

I. Constitutional Efficacy of the National Aspect of Green-federalism in India:

In a constitutional federalism there is a unique blend of legislative relations between the Central and the state government. Since the introduction of the *Government of India Act, 1935*[86] the concept of federalism uniformly divided under the Federal and the Provincial governments. For instance by virtue of *Section 99* of the said Act, there was a strict distribution of powers among the Federal legislatures, where it can legislate for the whole territory of the British India or for any Federal and the Provincial legislatures which can legislate only for the respective province. By virtue of *Section 100* of the *Government of India*

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iii. secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

[84]See *Article 74(1) of the Constitution of Switzerland, 1999*: "The Confederation shall legislate on the protection of the population and its natural environment against damage or nuisance".

[85]See *Article 77(2) of the Constitution of Switzerland, 1999*: "It shall lay down principles on the protection of the forests".

[86] See *Section 99 and 100 of the Government of India Act, 1935*
c.f. https://www.legislation.gov.uk/ukpga/1935/2/pdfs/ukpga_19350002_en.pdf (Accessed on 03/05/2022)

Act, 1935, the Federal Legislatures were entitled to legislate only on the subject enumerated in the "*Federal Legislative List*"; the Provincial legislatures were entitled to frame the laws on the "*Provincial Legislative List*". However the "*Concurrent Legislative List*" empowered both the government to legislate in the subjects as enumerated in the said list and the same legacy has eventually reflected in our constitutional mandate also in the post 1950.The Indian Constitution is the written constitution in nature but in spite of that it possesses the unique blend of rigidity and flexibility. The Constitution of India very uniformly caters the duty and responsibility on the National Government and the Provincial Government to legislate in their respective sphere under the canopy of the Union List, State List and the Concurrent List. Therefore, the national mandates of green federalism under the constitutional concept may be analyzed in the following manner:

i. ***Article 21***[87] of the Constitution of India, 1950 provides for the right to life and personal liberty. It also includes the right to enjoy the pollution free environment which is incidental to right to life;

ii. ***Article 48A***[88] directs the State in the protection and improvement of the environment and also to safeguard the forests and wild life of the country;

iii. ***Article 51A (g)***[89] caters the duty of the citizen to protects and improve the natural environment which also includes forests, lakes, rivers, wildlife etc;

iv. ***Article 245(1)***[90] of the Constitution enables that, the Parliament may enact laws for the whole or any part of the territory of India and simultaneously the legislature of the State may also enact laws for the whole or any part of the State;

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[87] See *Article 21, The Constitution of India, 1950: Protection of life and personal liberty:* "No person shall be deprived of his life or personal liberty except according to procedure established by law".

[88] See *Article 48A, The Constitution of India, 1950:* "The State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country".[Inserted. by the Constitution (Forty-second Amendment) Act, 1976, with effect from . 3.1.1977]

[89] See *Article 51A(g), The Constitution of India, 1950:* "to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures".[Contained in Part IV of the Constitution of India which was inserted. by the Constitution (Forty-second Amendment) Act, 1976, with effect from . 3.1.1977]

[90] See *Article 245(1), The Constitution of India, 1950: Legislation for giving effect to international agreements*: "Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State".

v. ***Article 246***[91]narrates about the subject matter of laws where the Parliament and the State Legislature can have the power to legislate on the subjects as specified in the respective Union List and the State List. But the Parliament and the State both can enjoy the law making power on the subjects as specified under the Concurrent List.

vi. In regard to the environmental federalism, the subject matters as specified in *Entry 17A* ("Forest") and *Entry 17B*[92] (Protection of wild animals and birds) of the Concurrent List. In the Seventh Schedule the both the government i.e. Parliament and the State collectively can enjoy the law enacting authority and power which undoubtedly promotes the true spirit of classic cooperative federalism;

vii. ***Matter 6*** and ***Matter 7***[93] of the Eleventh Schedule provides for the Social forestry and farm forestry (Matter 6) and Minor forest produce (Matter 7) respectively;

viii. ***Matter 8*** of the ***Twelfth Schedule***[94] narrates about the urban forestry protection of the environment as well as promotion of ecological aspect;

ix. ***Article 253***[95] empowers the Parliament to provide sufficient legislative effect on the international agreement or treaty and also to enact laws in regard to the implementation of that treaty or agreement for the entire or any part of the territory of India;

Hence, with reference to the constitutional mandates, the Parliament had enacted the following legislations in the domain of protection of environment as well as to

[91] See *Article 246, The Constitution of India, 1950:* Subject-matter of laws made by Parliament and by the Legislatures of States.

[92] See *Entry 17A*: Forests and *Entry 17B*: Protection of Wild Animals and Birds. Added by the virtue of *42nd Amendment,1976* which was transferred from the State List Entries 19 and 20

[93] See Matter 6 and 7, ELEVENTH SCHEDULE [Added by the *Constitution (Seventy-third Amendment) Act,1992]*

[94] See Matter 8, TWELFTH SCHEDULE [Added by the *Constitution (Seventy-fourth Amendment) Act,1992]*

[95] See *Article 253, The Constitution of India, 1950: Legislation for giving effect to international agreements*: "Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body".

explore the true essence of green federalism:

- The Wildlife Protection Act, 1972[96];
- The Forest (Conservation) Act, 1980;
- The Water (Prevention and Control of Pollution) Act, 1981[97];
- The Air (Prevention and Control of Pollution) Act, 1981[98];
- The Environmental Protection Act, 1986;
- The Biological Diversity Act, 2002[99];
- The National Green Tribunal Act, 2010;
- National Environmental Tribunal Act, 1995;

II. Judicial and Administrative Mandates in the domain of Environmental Justice:

In a federal constitution, the Judiciary has been assigned a very meaningful role. It is the guardian of the Constitution. Therefore, in the strict federal structure when there is conflict between the national and the regional government the role of judiciary is unimaginable in the matter of settling the conflicts. In the environmental federalism also the cardinal role of judiciary has created the revolution. The very essence of right to life as enshrined under Article 21 also includes the protection of environmental rights and whenever it is transgressed the remedy is always there from the Indian judiciary. Therefore, the concept of environmental justice may be discussed with the help of following judicial decisions:

- In *Lalit Miglani vs State of Uttarakhand*[100], *t*he petition was filed by the petitioner with a prayer of declaring the Himalayas Glaciers Streams and other water bodies like holy

[96] For instance it may be stated that, the Central Government appoints the *Director of the Wild Life Preservation* and the State Governments appoint *Chief Wildlife Warden* and *Wildlife Warden* at every districts.

[97] For instance Section 3 and Section 4 of the Said Act prescribes for the Constitution of the Central Pollution Control Board and State Pollution Control Boards, respectively for exercising the powers and authority conferred to them under this Act. Even Section 13 prescribes for the Constitution of a Joint Board. Section 16 prescribes about the functions of the Central Board and Section 17 narrates about the functions of the State Board.

[98] Section 3 provides for the establishment of the Central and State Pollution Control Boards respectively which have the responsibility to exercise the powers provided under this Act, and Section 16 prescribes about the functions of the Central Board and Section 17 narrates about the functions of the State Board. Further Section 19 of the said Act provides for the *State Pollution Control Boards* have the exclusive authority to declare any area as an air pollution control area, with consultation of the *Central Pollution Control Board.*

[99] This legislation contains the classification of three tire systems which broadly includes the National Biodiversity Authority, State Biodiversity Authority and Biodiversity Management Committees for the promotion and protection of the biological diversity and the intellectual property rights under the canopy of green federalism.

[100] IN THE HIGH COURT OF *UTTARAKHAND* AT NAINITAL Writ Petition (PIL) No.140 of 2015, Delivered on: 02.12.2016

river Ganga, Yamuna should be considered as the legal entities as juristic person. In this instant judgment the Hon'ble Uttarakhand High Court had promulgated that:

- The court by applying the doctrine of "*parens patriae" with an edictal essence had declared that all the Glaciers including Gangotri and Yamunotri, all the pious rivers like Ganga and Yamuna, streams, lakes, air, forests, springs, waterfalls etc. must be considered as the legal entity or legal personality or the juristic person or moral person or artificial person as well they must also be having all the status of a legal person which includes all the rights, duties and liabilities of a living person in order to preserve and conserve them for their survival sustenance and safety in this universe. The Court had further pointed out that "they are also accorded the rights akin to fundamental rights/ legal rights";*

- *The Court had further stated that, "The rights of these legal entities shall be equivalent to the rights of human beings and the injury/harm caused to these bodies shall be treated as harm/injury caused to the human beings*". The Court had also *ordered that if any person causes injury or harm either intentionally or unintentionally to the Himalayan glaciers, rivers, lakes, forests etc must be liable under the penal laws, environmental laws and other statutory laws;*

- The Court had further ordered the State Government should declare the banks of river *Ganga* as "*River Conservation Zones*". In that respective "*River Conservation Zones*" no construction activity must be permitted on the banks of river *Ganga* by any private and governmental agencies.

❖ In *Sushila Saw Mills v. State of Orissa*[101], the Supreme Court had directed that:

- The imposition of complete banning on the saw mill business in the prohibited area of reserve and protected forest neither arbitrary nor unreasonable nor discriminatory and subsequently it would not be violative of Article 14 of the Constitution of India;

[101] (1995) 3 SCC 363

- The Court had further propounded that the preservation of forest is a matter of great significance of public interest;

❖ In *Shri Sacchidananda Pandey v. State of West Bengal*[102], the Supreme Court had observed that:

- Whenever the problem of ecology is to be instituted before the Court then the court must follow the edictal values of Article 48A and Article 51A (g) of the Constitution.

- While determining the scope and applicability of the public interest litigation or the social interest litigation in the domain of environment justice, the Court had further observed that whenever there are gross invasion of the fundamental rights or basic human rights the essence of public interest litigation may be atomized in the form of remedy under the judicial conscience.

- The Apex Court had further expressed that "extending help when help is required does not mean that the doors of the Supreme Court are always open to anyone to walk in. It is necessary to have some self-imposed restrained on public interest litigants, so that this salutary type of litigation does not lose its credibility".

❖ In *Rural Litigation Entitlement Kendra, Dehradun v. State of U.P.*[103], (popularly known as the Dehradun Lime Quarries Case or Doon Valley Case) the Apex Court had ordered to close down the all the lime stone quarries which are involved in the environmental degradation. Actually this was brought before the judicial cognizance of the Supreme Court by the *Rural Litigation Entitlement Kendra* through a letter which was eventually accepted as a writ petition. The main allegation of '*Rural Litigation Entitlement Kendra'* was that, there were unauthorized, and illegal mining operations carried on in the Mussoorie Hills and nearby areas which was massively affecting the ecology of the area and also caused environmental disturbances and damage.

[102] AIR 1987 SC 1109
[103] (1985) 2 SCC 341

- In *N. D. Jayal v. Union of India*[104] the Supreme Court had propounded that the right to health being a fundamental right under Article 21 incidentally includes that clean and healthy environment itself is a branch of fundamental rights. The Court had further observed that, "the adherence to sustainable development is a *sine qua non* for maintenance of symbiotic balance between the right to development and development. This concept is an integral part of the life under Article 21".

- In *Indian Council for Enviro-Legal Action v. Union of India*[105], the Supreme Court in the domain of environmental justice had opined that, the "*Polluter Pays Principles*" would be enforced by the government even under Section 3 of the Environment (Protection) Act, 1986 which empowers the Government to take all such measures as it deems necessary for the purpose protecting of protecting and improving the quality of the environment. In this regard the Court had observed that "the polluter pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution".

- *A.P. Pollution Control Board v Prof. M.V. Nayudu*[106] in the reflection of the green federalism the Supreme Court had recommended for the initiating the amendment of the environmental laws. The Court had further directed Central and all the State Pollution Control Boards to communicate the copy of the judgment to the other authorities dealing with the protection of environment, ecology, forest and wildlife. The Apex Court had further directed that all the State Governments must take effective measures to communicate the concerned State Pollution Control Boards in order to adopt the appropriate action against the environmental degradation;

- In the historic judgment *M.C. Mehta v. Union of India*[107] the Supreme Court by generating the new principle of "*absolute liability*" by replacing the century old doctrine of "*strict liability*" which was propounded in the land mark judgment of *Rylands v. Fletcher*[108].*In this instant judgment the Supreme Court had held that "in a modern industrial society with highly developed scientific knowledge and technology where hazardous or inherently*

[104] (2003) Supreme 572 at 586
[105] (1996) 3 SCC 212 (This case is popularly known as the *H-Acid Case*)
[106] AIR 1999 SC 812
[107] AIR 1987 SC 1086 (Popularly known as the *Oleum Gas Leakage Case*)
[108] (1868) (19) L.T. 220

dangerous industries are necessary to carry on as part of developmental programme, the Court need not feel inhibited by this rule merely because the new law does not recognize the rule of strict and absolute liability in case of an enterprise engaged in hazardous and dangerous activity".

- In *M.C. Mehta v. Kamal Nath*[109] the Judiciary has enumerated the *Doctrine of Public Trust* as the part of the Indian environmental jurisprudence. The Court had stated that "the State is the trustee of all natural resources which are by nature meant for public use and employment. Public at large is the beneficiary of the sea-shore, running water, airs, forests and ecological fragile lands. The State as a trustee under a legal duty to protect the natural resources. These resources meant for the public use can't be converted into private use".

- In *Vellore Citizens Welfare Forum v. Union of India*[110], the Supreme Court propounded that, '*Polluter Pays Principle'* and '*Precautionary Principle*' both are the *sine-qua-non* of *"sustainable development*" which are also the part of the environmental law of the country. The Court had also stated that these two basic principles of sustainable development are the part of right to life under Article 21 of the Constitution. The Supreme Court had also recommended for constituting a special bench viz. "*Green Bench*" to monitor and deal with the matters relating to environmental issues and ecological degradation. In the determination of the scope and ambit of environmental federalism the Court had observed that the most significant objective of the Environment Act to constitute an appropriate authority who has adequate powers to control the pollution and protect the environment. The Court had further opined that, "*it is high time that the Central Government realizes its responsibility and statutory duty to protect the degrading environment in the country".* Therefore, it is utmost necessary for the Apex Court to direct the Central Government to adopt immediate and adequate action under the provisions of the Environmental jurisprudence.

The *NITI Aayog* had implemented the Sustainable Development Goals with the successful collaboration or the Union Government and the State Governments/Union Territories for the monitoring the abovementioned goals.[111] In the promotion of green

[109] (1997) 1 SCC 388 *(*Popularly known as the *Spwan Motel Case*)
[110] (1996) 5 SCC 647 (Popularly known as the *Tamil Nadu Tanneries Case*)
[111] See https://www.niti.gov.in/verticals/sustainable-dev-goals (Accessed on 24/06/2022)

federalism, the Government of India had inaugurated the *National Action Plan on Climate Change* (NAPCC) on 30th June in the year of 2008. Apart from that, under the coordination of NAPCC the *State Action Plan on Climate Change* (SAPCC) has also been initiated at the State level by the recommendation of the Central Government which considers as the classic format to cooperative federalism in the domain of environmental protection. The State Governments further may seek financial assistance from the Central Government for the purpose of successful and meaningful implementation of the following activities:

- ✓ To implement the National Missions under the National Action Plan on Climate Change (NAPCC);
- ✓ Receiving the financial allocation by the Finance Commission;
- ✓ Compensatory Afforestation Management and Planning Authority[112];
- ✓ Promoting the unallocated pool of resources for North Eastern states;
- ✓ Promotion of bilateral and multilateral agencies;
- ✓ Promotion of the Carbon offsetting and trading schemes at the domestic and international levels;[113]

The National Action Plan on Climate Change (NAPCC) had also adopted the eight National Missions on the regulation of the immerging scenario of the climate change which are as follows:

- ➢ *National Solar Mission;*
- ➢ *National Mission for Enhanced Energy Efficiency;*
- ➢ *National Mission on Sustainable Habitat;*
- ➢ *National Water Mission;*
- ➢ *National Mission for Sustaining the Himalayan Eco-system;*
- ➢ *National Mission for a Green India;*
- ➢ *National Mission for Sustainable Agriculture;*
- ➢ *National Mission on Strategic Knowledge for Climate Change;*[114]

[112] With reference to the landmark judgment of *T.N. Godavarman Thirumulpad v. Union Of India* [Writ Petition (Civil) No. 202 of 1995] where the Court had recommended for the constitution of Compensatory Afforestation Fund Management and Planning Authority at the National level as well as at the State level under the guidance and supervision of the Ministry of Environment and Forest, Government of India and also under the canopy of Section 3(3) of the *Environment (Protection) Act, 1986*. [*Cf.*(https://indiankanoon.org/doc/187366700/) Accessed on 24/06/2022]

[113] See https://dste.py.gov.in/sites/default/files/guidelinesforfundingsapcc.pdf (Accessed on 24/06/2022)

[114] The Government of India further caters a duty on the *Department of Science &Technology*, Ministry *of Science &Technology* to adopt the responsibility of coordinating two Missions among these eight missions on climate

III. Conclusion:

In the concluding analysis it may be stated that, the ancient Indian philosophy expressly advocated for the protection of environment. With reference to the *Kautilya's* 'Arthashastra' it may be stated that each and every individual has a sacred *dharma* to protect the environment and the Mother Nature. So, it may be stated that "***ishavashyamidan sarvan yatkinchan jagatyan jagat; tena tyaktena bhunjitha na gridhah kashyacid dhanam***"[115]which immensely emphasized that, the mother environment belongs to all the living beings and subsequently it must be protected by all for the welfare of all because nature is the gift from the God. In the modern age also, every State has the unique responsibility to implement suitable legislative instruments for the protection of mother environment. Hence, in this regard, the concept of green federalism may be considered as the most efficient and effective instrument in combating against the environmental degradation. The role of judiciary is also equally considered as the most cardinal aspect in the process of establishing the environmental justice. So, whenever the basic rights of environment being the *sine-qua-non* of the right to life is infringed due to environmental torts in that regard the rights are reinforced by the judiciary with a very philanthropic approach.

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change *viz.* :

- National Mission for Sustaining Himalayan Ecosystem (NMSHE) and
- National Mission on Strategic Knowledge for Climate Change (NMSKCC)

[*Cf* https://dst.gov.in/climate-change-programme (Accessed on 24th June 24, 2022)]

[115] See *Ishopanisad-I c.f.*https://blog.ucbmsh.org/department/environmental-services-evs-department/protection-of-environment-ethics-in-vedas-shloka(Accessed on 03/05/2022)

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Contempt of Court - Bar on Freedom of Speech or Necessary Evil?

Dr. Rabbiraj C & R.K. Rajkhanna[116]

ABSTARCT

The disposition of the Judiciary in neoteric times seem to be intolerant to criticism. The power of the courts to punish those who disobey the courts are well established and clear. Any attempt to disrespect or violate legal authority and management is considered contempt of court. However, it is unclear to what extent such punitive powers can be used within reassuringly safe boundaries to protect an individual's right to privacy. The court found it essential to "build public respect and trust in the judicial process" to justify its use of the power of contempt. Recurrent instances of invoking the contempt jurisdiction to stifle freedom of speech has opened floodgates of questions that the courts are muzzling down free speech in the name of 'Scandalizing the Court'. The first section of the paper is a comprehensive analysis on the evolution of Contempt of Courts Act in India and propels light on whether the criminal contempt provision under the Contempt of Courts Act, 1971 shreds freedom of speech enumerated under the constitution. In this context, we have made a modest attempt to investigate the origins of this judicial power, which has been the subject of much scholarly discussion. The article also discusses the contentious issues surrounding recent cases in which the authority and integrity of the country's Supreme Court have been called into question and how these issues have been resolved. With an in-depth description of the issues concerning the Contempt Jurisdiction of the High Court and the Supreme Court, the paper concludes that the Criminal Contempt provision under the Contempt of Courts Act, 1971 erodes free speech enunciated under the Constitution.

Keywords: Contempt of Courts Act, 1971, Criminal Contempt, Civil Contempt, Constitution, Supreme court.

Introduction

"Let me say this at once that we will never use this Jurisdiction to uphold our own dignity. We

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do not fear criticism, nor do we resent it for there is some far more important at stake and it is no less than freedom of speech itself all that we ask is those who criticize us should remember that from the nature of our duties we cannot reply to their criticisms, we cannot enter into public controversies and we must rely on our conduct itself to be its own vindication. Sometimes an upright Judge is unjustifiably criticized the best course of action for such a Judge is to ignore baseless criticisms but pay heed to honest and correct criticisms"

-Lord Denning

Contempt of Court as a theory protects the Judiciary from unwarranted criticism and motivated attacks. The Concept of Contempt of Court has its genesis in England. It is a common law principle that seeks to protect the judicial power of the king, initially exercised by himself, and later by a panel of judges who acted in his name[117]. It is basically derived on the idea that "King can do no wrong".

Rule of law forms has been identified from time to time as one of the important features, that it also forms the basic structure of the Indian Constitution. Right to obtain judicial timely relief thus, also becomes an important aspect of the same. The Courts thus have the onus to look into administration of justice and must be also duly empowered to take cognizance and remedy any conduct which affects such process, misconduct or any act which brings disrepute to courts. The courts at same time must judiciously use the same to preserve the honor and dignity of the judicial system and the same must not been seen as weapon of retribution in public domain.[118]

The First Contempt of Courts Act in India was introduced in the year 1926 and it was enforced only in the presidency towns which is now called as the metropolitan cities (Madras, Calcutta, and Bombay) which had courts of record now replaced as the High Court. The Parliament drafted the Contempt of Courts Act and it entered the Gazette in the year 1971. In the year 2006, Section 13 was amended, and it is now a settled position of law that truth is a valid defense for contempt. Punishment is prescribed under section 12 of the Act which prescribes six months of simple imprisonment or rupees thousand fine or both.

Justice Krishna Iyer has quoted that the "The law of Contempt has a vague and wandering Jurisdiction with uncertain boundaries, such a law regardless of public good may unwittingly trample on civil liberties". It is asserted that the word "Contempt" is not clearly defined not

[117] https://www.thehindu.com/news/national/the-hindu-explains-what-is-contempt-of-court/article32249810.ece
[118] Kapildeo Prasad Sah & Ors. v. State of Bihar & Ors., (1999) 7 SCC 569

only under the constitution but also under the Contempt of Courts Act 1971.The source for contempt law is in Article 129, Article 215, and Article 142(2) of the Constitution.

The Constitution gives powers to the Supreme Court and the High Courts to punish for contempt, Article 129 speaks about the Supreme Court's power to punish for contempt, Article 142(2) gives the power to Supreme Court to investigate the matter pertaining to contempt and Article 215 gives powers to the High court to investigate and punish for Contempt.

The Constitutional Courts can take up the issue of Contempt on a petition from the Advocate General (High Court), Attorney General (Supreme Court) or any person can make an application for contempt proceedings subject to the approval of the Advocate General and Attorney General.

The contempt of courts act basically divides contempt into a Civil Contempt and Criminal Contempt.

Civil Contempt

Civil Contempt under Section 2(b) means wilful disobedience to any Judgment, Decree, Direction, and Order, Writ or other process of a court or wilful breach of an undertaking given to a court.

Civil Contempt to put it simply that every Judgment is ought to be followed and a disobedience of any judgement calls for contempt action. There is no muddle with Civil contempt that in a civilized society, it is needed as rightly pointed by Justice P.B.Sawant that "We are governed by the rule of law, Judgments must be followed and if Judgements are not followed the authority of court goes away and we will turn into a lawless society.

In Ashok paper khamgar Union V Dharam[119] the court expounded into the aspect of willful disobedience were in the Supreme Court ruled that it is an act done voluntarily, intentionally with a specific intent to do something which the law forbids. In Supreme Court Bar Association v Union of India[120] the apex court while examining the power of contempt remarked that no

[119] (2003) 11 SCC 1
[120] Supreme Court Bar Association vs Union Of India & Anr on 17 April, 1998

Act of parliament can take away the inherent jurisdiction of the court of record to punish for contempt. In T.Sudhakar prasad v Govt of Andhra Pradesh[121] the court asserted that the provisions of the contempt of court act are in addition and not in derogation of Article 129 and Article 215 of the constitution and the court affirmed that no provision under the act can limit or regulate the exercise of Jurisdiction contemplated by the said articles.

Scandalizing free Speech

Criminal Contempt under Section 2(c) delves on three Sub Categories:

1) Publication written or Oral
2) Scandalizing or lowering the authority of the court
3) Interfering with the due course of Judicial Proceedings or Obstructing with the administration of Justice.

A criminal contempt has a very wide connotation and is defined under the Act as "An Act which scandalizes or tends to scandalizes or lowers the authority of any court, prejudices or interferes or tends to interfere with the due course of any Judicial proceedings or interferes or tends to interfere or obstruct with the administration of Justice in any manner. The above-mentioned words for criminal contempt are so vague and wide that different Judges have interpreted these words in different ways. It is surprising to see that we have adopted the colonial mind setup that in the Contempt of Courts Act, 1971 'Truth' was not initially recognized as a valid defense only in the Contempt of Courts (Amendment) Act, 2006 truth was recognized as a valid defense.

But in a vibrant democracy like India were freedom of speech has been guaranteed under the constitution, it is pertinent to strike a balance between contempt and freedom of speech.
It is agreeable that in day-to-day discourses and communications there has to be certain limitations to free speech. But it should not be permanently muzzled down in the name of scandalizing the court.

[121] T. Sudhakar Prasad vs Govt. Of A.P. & Ors on 13 December, 2000

In P.N.Duda v V.P.Shivshankar[122] the Apex Court held that mere criticism of the Court order doesn't amount to contempt as long it doesn't hamper the administration of Justice. Within four years in Pritam lal v High court of Madhya Pradesh[123] the Supreme Court reversed its position that in order to preserve the court from interference it becomes the duty of the court to punish the contemnor to preserve its dignity.

In Justice Karnan's case[124] when he expressed no remorse for levelling baseless allegations against the Judges of the supreme court he became the first sitting judge to be imprisoned for contempt. It is ironic that Mr.Prashant Bhushan tweeted in the year 2017 that he was glad that the supreme court incarcerated Justice Karnan for scandalizing the court without any evidence, The same Mr.Bhushan went on to blow hot and cold air at the same time by casting aspersions that half of the last sixteen Chief Justices were brazenly corrupt in an interview to the Tehelka Magazine in the year 2009.

Freedom of speech and expression is the corner stone of any living democracy including fair and reasonable criticism of working of court. The statements made must be fair, truthful and must be made on account of public good.[125] It is a settled position of law that freedom of speech and expression is not absolute and subjected to reasonable restrictions under Article 19(2) of the constitution. It is also argued that Contempt is not part of the colonial continuity and Contempt of court has been incorporated under 'Reasonable restrictions' enumerated under Article 19(2) by our constitutional framers. In cases one embarks and takes the path Constructive criticism of the functioning of the Judiciary, the onus lies on person making the statement to ensure that it is correct, rather than making sweeping statements under the garb of freedom of speech and expression.

Arundhati Roy's case[126] is a classic example when the author expressed no penitence for writing a vituperative article against the Narmada Bachao Andolan Judgment. On a day-to-day basis the image of the court is lowered through 'Media Trials'. The Chief Justice of India is a 'Pater Familias' of the Institution, therefore any imputations made against the Chief Justice of

[122] P.N.Duda vs V.P.Shiv Shankar & Others on 15 April, 1988(Page 1208)

[123] Pritam Pal vs High Court Of Madhya pradesh on 19 February, 1992

[124] Justice C.S. Karnan vs The Honourable Supreme Court of India on 23 August, 2017(Page 703)

[125] *Ibid.*

[126] AIR 2002 SC 1375

India is also an imputation made against the institution.

There was an event when a member of the bar made certain scathing comments against the registry that the cases are not allotted properly and there are a lot of discrepancies in the matter of listing of cases. The Supreme Court took cognizance of this issue and asserted that imputation against the registry is an imputation against the Chief Justice of India and barred him from practice for one month but contempt proceedings were dropped.[127]

Justice Hidyatullah confined the limits of contempt by stating that criminal contempt should not be invoked unless the statement made is "Manifest, Mischievous or Substantial" so the use of this contempt power should be spare, rare and exercised with restraint. The Judiciary should keep in mind the lucid words of Justice Krishna Iyer that for the Judiciary to overcome criticism the best defense available is good performance.

The supreme court showed magnanimity in Prashant Bhushan's case[128] considering the fact that he is a senior member of the bar, It is doubtful whether the same level of benevolence will be shown to standup comedian Kunal kamra[129] who was recently granted consent to be prosecuted for criminal contempt by the Attorney General of India Shri K.K.Venugopal for his tweets against the supreme court for granting bail to Republic Tv Editor-in-chief Mr. Arnab Goswami.

What does not amount to contempt?

The courts have always held that there must be balance maintained between genuine criticism and abusive and scandalous speech. The right to exercise one's freedom to speak must be within bounds of reasonability not amounting to inciting public or insulting the stature of court.[130] In addition to that when court orders are not adhered to due to genuine mistake or due lack of understanding in true application of the order, the said situation does not call for application of contempt charge.[131]

[127] https://www.scconline.com/blog/post/2017/08/17/advocate-mohit-chaudhary-barred-from-practicing-for-1-month-for-levelling-false-accusations-on-sc-registry-contempt-charges-dropped/
[128] In Re Prashant Bhushan, 14 August, 2020
[129] https://www.thehindu.com/news/national/ag-gives-consent-for-criminal-contempt-action-against-kunal-kamra/article33084550.ece
[130] In M.V. Jayarajan v. High Court of Kerala & Anr (2015) 4 SCC 81
[131] In B.K. Kar v. Hon'ble the Chief Justice and his companion Justices of the Orissa High Court & Anr, AIR 1961 SC 1367

Further in cases where there is prima facie opinion that the judgement or order of the court could be interpreted in more than one way. If the contemnor has acted in way other than the one which was viewpoint of the court without any intention of willful disobedience, the same shall not amount to contempt of court but for genuine mistake.[132]

Additionally, court have been vocal on numerous occasions to be clear that mere noncompliance, technical contempt differs from the intentional act of the person to interfere with process of administration of justice and lower the stature of the court. There are multiple cases and situations which may exhibit certain shades of contempt but fall short of that would be needed to invoke the stringent provisions of contempt.[133]

Position in other Countries

England and Wales

As per the English legal system, the offence of contempt is governed by Contempt of Court, Act 1981, which covers both civil and criminal contempt within its ambit. It provides for an imprisonment of two years for the guilty contemnor. Section 1 of the above-mentioned act applies the principle of strict liability thereby any act of the person which amounts to interference with process of justice irrespective of contemnor intent.[134]

The Law Commission of United Kingdom had published a detailed report in 2012 on contempt, wherein it specifically recommended omitting and abolishing the offence of scandalizing the court in relation to criminal contempt. It was noted by the commission that the idea behind the powers of contempt was on the same line with seditious libel to moderate and control what was being said about the state machinery and judges in turn. Further there was less than three prosecutions that also prior to 1931. In addition to that the commission also noted there were sufficient provisions under Public Order Act 1986 and Communication Act 2003. Thus, an amendment to Crime and Court Bill, was introduced in 2013 which abolished the offence in line with recommendations of 2012 report.[135]

[132] Mrityunjoy Das & Anr. v. Sayed Hasibur Rahaman & Ors., AIR 2001 SC 1293
[133] Murray & Co. v. Ashok Kr. Newatia, AIR 2000 SC 833
[134] Contempt of Court, Act 1981 available at https://www.legislation.gov.uk/ukpga/1981/49
[135] The Law Commission (Law Comm No. 335) "Contempt of Court: Scandalising the Court", (2012) available at https://www.lawcom.gov.uk/project/contempt-of-court-scandalising-the-court/

Pakistan

The law regarding contempt is governed by the Contempt of Court ordinance 2003. The contempt of court act 1976 stood repealed by the Contempt of Court Ordinance, 2003 which was further repealed by Contempt of Court Act 2012 until it was quashed by Supreme Court of Pakistan. Further the powers to punish for contempt are derived from Article 204 read with federal list entry 55 of Constitution of Islamic Republic of Pakistan provides contempt powers to Supreme Court of Pakistan in realm of contempt of court or acts affecting the dignity of court or the judge.

The Contempt of Court Act 2012 was passed with major exception being given public office holders such as prime ministers and other ministers. Further the wordings scandalising the court was replaced with the term scandalising a judge. This was unequivocally declared unconstitutional and void by court in case thereby negating the amendments to bring all persons under the ambit of law, with no exceptions.[136]

United States of America

The law in United States also recognizes both civil and criminal contempt. It states that where the party refuses to adhere to a mandate in civil case will lead to civil contempt which may be cured by adhering to the order or sentencing. The criminal contempt is one where the contemnor has already committed an act which has harmed the stature of court and must be punished to restore the dignity of court. The Judiciary Act of 1789 provided the courts with power to punish for the contempt with fine or imprisonment. The wide ambit of the power was curtailed with passage the Judiciary Act of 1813 to certain extent. The courts in United States of America also have balanced the first amendment right of free speech with that of contempt law. The courts have held that the power of contempt will be subject to guarantees under the first amendment provided to press and individuals.[137]

Conclusion

The Contempt of Courts Act, 1971 and relevant contempt redressal provisions under constitution gives rise to debate seeking clarity to what institutional dignity it tends to protect and what is the defined limit of the same. There is always discussion and suggestion from all quarters to exercise restraint while dealing with contempt cases. The wide ambit of terms

[136] Baz Muhammed Kakar & Anr. v. Federation of Pakistan
[137] Bridges vs California

scandalizes the court or prejudices judicial proceedings under the Contempt of Courts Act, 1971, certain trial and convictions always raise concern about need and utility of above provisions. It may give rise to more cases where the provisions seeking to safeguard administration of justice itself may succumb to comfort of individual judge's interpretation, further violating the basic principle of 'one shall not be judge in its own cause'.

The law in present form and its use will give rise to more conflict situations. The use contempt powers shall not be used to blanket criticism but must be used in rare occasion wherein it becomes impossible to remedy situation without invoking contempt powers. In all States around the pillars of democracy are always pounded with significant criticism which is different from monarchy or autocracy where the curtains are drawn on free speech and opinion. In republic of India courts have played a major role as guardian of free speech and the same is like to bring out tremendous rise in contempt related cases, until a refined approach is undertaken by the judiciary overall.

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Protection of Right to Property: A New Legal Mechanism

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ABSTRACT

The expression "property" has been used in Article 31 of the Constitution of India in its widest connotation. Article 31 is designed to protect property in all its forms. The expression "Property", therefore must be understood both in the corporeal sense as having reference to these specific things that are susceptible of private appropriation and enjoyment as well as its juridical or legal sense of a bundle of rights which the owner can exercise under the municipal law with respect to the user and enjoyment of those things to the user and enjoyment of those things to the exclusion of others. Government has the authority to take private property when it is needed for a public purpose. Such power is an incident of sovereignty. It is an offspring of political necessity. It is often necessary for the proper performance of governmental functions to take private property for public use. If public purpose can be satisfied by not rendering common man homeless and by exploring other avenues of acquisition, the Courts, before sanctioning an acquisition, must in exercise of its power of judicial review, focus its attention on the concept of social and economic justice. While examining these questions of public importance, the Courts, especially the Higher Courts, cannot afford to act as mere umpires.

Keyword: Acquisition, Compensation, Compulsory acquisition, Eminent domain, Public purpose.

Introduction

The Land Acquisition Act, 1894 is the general law relating to acquisition of land for public purposes and also for companies and for determining the amount of compensation to be made on account of such acquisition. The provisions of the said Act have been found to be inadequate

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in addressing certain issues related to the exercise of the statutory powers of the State for involuntary acquisition of private land and property. The Act does not address the issues of rehabilitation and resettlement to the affected persons and their families.

The provisions of the Act are also used for acquiring private lands for companies. This frequently raises a question mark on the desirability of such State intervention when land could be arranged by the company through private negotiations on a "writing seller-willing buyer" basis, which could be seen to be a more fair arrangement from the point of view of the land owner. In order to streamline the provisions of the Act causing less hardships to be owners of the land and other persons dependent upon such land, it is proposed repeal the Land Acquisition Act, 1894 and to replace it with adequate provisions for rehabilitation and resettlement for the affected persons and their families.

There have been multiple amendments to the Land Acquisition Act, 1894 not only by the Central Government but by the State Governments as well. Further, there has been heightened public concern on land acquisition, especially multi-cropped irrigated land and there is no central law to adequately deal with the issues of rehabilitation and resettlement of displaced persons. As land acquisition and rehabilitation and resettlement need to be seen as two sides of the same coin, a single integrated law to deal with the issues of land acquisition and rehabilitation and resettlement has become necessary. Hence the proposed legislation proposes to address concerns of farmers and those whose livelihoods are dependent on the land being acquired, while at the same time facilitating land acquisition for industrialization, infrastructure and urbanization projects in a timely and transparent manner.

Earlier, the Land Acquisition (Amendment) Bill, 2007 and Rehabilitation and Resettlement Bill, 2007 were introduced in the Loksabha on 6th December 2007 and were referred to the Parliamentary Standing Committee on Rural Development for examination and Report. The Standing Committee presented it reports (the 39th and 40th Reports) to the Loksabha on 21st October, 2008 and laid the same in the Rajyasabha on the same day. Based on the recommendations of the Standing Committee and as a consequence thereof, official amendments to the Bills were proposed. The Bills, along with the official amendments, were passed by the Loksabha on 25th February, 2009, but the same lapsed with the dissolution of the 14th Loksabha.

It is now proposed to have a unified legislation dealing with acquisition of land, provide for

just and fair compensation and make adequate provisions for rehabilitation and resettlement mechanism for the affected persons and their families. The Bill thus provides for repealing and replacing the Land Acquisition Act, 1894 with broad provisions for adequate rehabilitation and resettlement mechanism for the project affected persons and their families.

Provision of public facilities or infrastructure often requires the exercise of powers by the State for acquisition of private property leading to displacement of people, depriving them of their land, livelihood and shelter, restricting their access to traditional resource base and uprooting them from their socio-cultural environment. These have traumatic, psychological and socio-cultural consequences on the affected population which call for protecting their rights, particularly in case of the weaker sections of the society including members of the Scheduled Castes (SCs), the Scheduled Tribes (STs), marginal farmers and their families.

There is an imperative need to recognize rehabilitation and resettlement issues as intrinsic to the development process formulated with the active participation of affected persons and families. Additional benefits beyond monetary compensation have to be provided to families affected adversely by involuntary displacement. The plight of those who do not have rights over the land on which they are critically dependent for their subsistence allowance is even worse. This calls for a broader concerted effort on the part of the planners to include in the displacement, rehabilitation and resettlement process framework, not only for those who directly lose their land and other assets but also for all those who are affected by such acquisition. The displacement process often poses problems that make it difficult for the affected persons to continue their traditional livelihood activities after resettlement. This requires a careful assessment of the economic disadvantages and the social impact arising out of displacement. There must also be holistic effort aimed at improving the all-round living standards of the affected persons and families.

The Law would apply when Government acquires land for its own use, hold and control, or with the ultimate purpose to transfer it for the use of private companies for public purpose. Only rehabilitation and resettlement provisions will apply when private companies buy land for a project, more than 100 acres in rural areas or more than 50 acres in urban areas. The land acquisition provisions would apply to the area to be acquired but the rehabilitation and resettlement provisions will apply to the entire project area even when private company approaches Government for partial acquisition for public purpose.\

"Public purpose" has been comprehensively defined, so that Government intervention in acquisition is limited to defence certain development projects only. It has also been ensured that consent of at least 80 per cent of the project affected families is to be obtained through a period informed process. Acquisition under urgency clause has also been limited for the purposes of national defence, security purposes and Rehabilitation and Resettlement needs in the event of emergencies or natural calamities only.

To ensure comprehensive compensation package for the land owners a scientific method for calculation of the market value of the land has been proposed. Market value calculated will be multiplied by a factor of two in the rural areas. Solution will also be increased up to 100 per cent of the total compensation. Where land is acquired for urbanization, 20 per cent of the developed land will be offered to the affected land owners.

Comprehensive rehabilitation and resettlement package or land owners including subsistence allowance, jobs, house, one acre of land in cases of irrigation projects, transportation allowance and resettlement allowance is proposed. Comprehensive rehabilitation and resettlement package for livelihood losers including subsistence allowance, jobs, house, transportation allowance and resettlement allowance is proposed.

Special provisions for Scheduled Castes and the Scheduled Tribes have been envisaged by providing additional benefits of 2.5 acres of land or extent of land lost to each affected family; one time financial assistance of Rs.50, 000, twenty-five per cent additional rehabilitation and resettlement benefits for the families settled outside the district free land for community and social gathering and continuation of reservation in the resettlement area etc.

Twenty-five infrastructural amenities are proposed to be provided in the resettlement area including schools and play grounds, health centres, roads and electric connections, assured sources of safe drinking water, Panchayat Ghars, Anganwadis, places of worship, burial and cremation grounds, village level post offices, fair price shops and seed-cum-fertilizers storage facilities.

The benefits under the new law would be available in all the cases of land acquisition under the Land Acquisition Act, 1894 where award has not been made or possession of land has not been taken. Land that is not used within ten years in accordance with the purposes, for which it was acquired, shall be transferred to the State Government's Land Bank. Upon every transfer

of land without development, twenty per cent of the appreciated land value shall be shared with the original land owners.

Stringent and comprehensive penalties both for the companies and Government in cases of false information, mala fide action and contravention of the provisions of the proposed legislation have been provided.

Constitutional Background

The legal background of Article 31 is to be found in sections 299 and 300 and entries 9 and 21, schedule 7 to the Government of India Act, 1935. Sec. 299 of the Government of India Act says that no person shall be deprived of his property in British India except by authority of law.

The Federal or a provincial legislature should not have any power for compulsory acquisition of property except for any public purpose and only by paying compensation or only it that particulars law has provisions for determining compensation. It further provided that no bill or amendment for transference of any lend or extinguish or modification of any rights relating to any land shall be introduced or moved in any chamber of Federal legislature without the previous sanction of Governor General or in a chamber of provincial legislature without the previous sanction of Governor.

Statutory Right to Property

The expression "property", it will be noted, has been used in Article 31 in its widest connotation. Article 31 is designed to protect property in all its forms. The expression "Property", therefore must be understood both in the corporeal sense as having reference to these specific things that are susceptible of private appropriation and enjoyment as well as its juridical or legal sense of a bundle of rights which the owner can exercise under the municipal law with respect to the user and enjoyment of those things to the user and enjoyment of those things to the exclusion of others.

A statutory right to purchase a land is not a right to property, but the right to arrears of pension, pay and allowances annual cash maintenance grant. Constitute a property. The Supreme Court has held that concept of 'property' has to be liberally construed and any legal right which can be enforced through a court is a right in the nature of property within the meaning of Article 31.

The term 'public purpose' was incorporated in sec 299 because the taking away of one's property on execution of a judgment in favour of other person would also come within the purview of compulsory acquisition so if the term 'public purpose' is omitted such acquisition of property would also become illegal.

Sec 300 provided for the protection of certain private property, perhaps more accurately described as 'vested interest' namely grants of lands or of tenure of land free of land revenue, or subject to partial remission of land revenue, held under various names of Taluk, inam, watan, jagir and maufi etc. such grants being either perpetual or for two or three generations. These grants had the authority of the British Government that on due observance by the grantee of specified conditions, the rights of himself and his successors would be respected for all time or for the duration of the grant.

The sanad granted by Lord canning to the Taluqdar of Oudh was an instance of a grant in perpetuity the rights conferred by the sanad being perpetuity the rights conferred by the sanad being permanent, hereditary and transferable. Sec. 300 further provides that the previous sanction of the Governor General or the Governor as the case may be to any proposal, legislative or executive, which would alter or prejudice the right of the possessor of any privilege of the find to which have referred earlier. Also Entry 9 of the Government of Indian Act deals with compulsory acquisition of land. Entry 21 describes the term land, and includes rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents transfer alienation and devolution of agricultural land : land improvement and agricultural loans, colonization; courts of wards, encumbered and attached estates, treasure trove.

In *Thakur Jagannath Baksh Singh United Provinces*[139], the plaintiff was a taluqdar of Oudh, he impugned the U.P. Tenancy Act, 1939 on the ground (i) that the provincial legislature was not competent to legislate on a crown grand (ii) that the impugned Act cut down the absolute rights claimed by the taluqdars to be comprised in the grant of their estates as evidenced by sanads and thereby contravened Sec. 299 of the government of India Act.

In the judgment, Gwyer C.J. held that the provisions of the impugned Act were covered by entry 21 list 11, schedule 7 of the Government of India Act and were not ultra vires. Once it

[139] (1934) F.C.R. 72.

was found that the subject matter of a crown grant was within the competence of the provincial legislature that legislature had full power to legislate about it, unless the constitution Act itself expressly prohibited legislation on the subject, either absolutely or conditionally.

The doctrine that a grantor may not derogate from his own grant could not be applied in such a way as to limit the legislative power. Moreover to the contention of violation of sec 299 (2), the observation of the court was that the law only regulated the land lord tenant relation and thereby diminishes the rights which the land lord has exercised in connection with his land and does not authorize the compulsory acquisition of the land for public or any other purposes and therefore the question of compensation does not arise.

In the Constituent Assembly on December 9, 1948 consideration of the draft Art 24 corresponding to Article 31 was held over. On September 10, 1949, the Prime Minister Pandit Jawaharlal Nehru, moved that a new Art 24 be substituted for the old. As regards the compensation he distinguished the petty acquisitions, compensation he distinguished the petty acquisitions, acquisitions of small bits of property or even relatively larger bits for public use for which the law had laid down a fixed - standard from acquisitions for large schemes of social reform and social engineering which acquisitions could not be looked at merely from the point of view of the individual. Equitable compensation meant equitable to the individual and to the community.

There were two views regarding the expression compensation. One was that the compensation should be equivalent to the money value of the property at the date of acquisition ie, its market value. On the other side when it refers to the law specifying the principles on which and the manner in which the compensation is to be determined. The language employed in Sec. 299 and that employed in Article 24 not in pari materia with the language employed in corresponding provisions in other constitutions referring to the compulsory acquisition of property on payment of ‘just compensation’. The expression just which finds a place in the American and in the Australian constitutions is omitted in Sec. 299 and Article 24.

Article 31 as originally enacted says that no person shall be deprived of his property except by the authority of law. Acquisition can be made only for public purpose and for that compensation should be paid. Here property included commercial and industrial undertakings also. Any law made for the purpose of acquisition should be valid only if it gets assent of the president.

Art. 31(2) required that the acquisition or the taking possession of property should be for a public purpose and on payment of compensation, the power to acquire or requisition of property was originally contained in the following entries in the three lists of sec.7. List I, entry 33 : - "Acquisition or requisition of property for the purpose of the Union", List II, entry 36 : "Acquisition or requisition of property, except for the purposes of the Union, subject to the provisions of entry 42 to List III, and List III entry 42: principles on which compensation is to be given". But by the 7th Amendment Act, 1956, deleted entries 33 and 36 in Lists I and II and inserted a new entry 42 in List III which runs "The acquisition and requisitioning of property.

Before the Amendment, there was an inclusive power in parliament to pass laws for the acquisition and requisition of property for the purposes of Union, an exclusive power on the state legislatures for the acquisition or requisition of property except for the purposes of the union, but subject to entry 42 of List III which give concurrent power to the legislatures to fix the principles of compensation for the acquisition and requisition of the property for the public or other purposes of union or state. After the constitutional Amendment acquisition and requisition became subjects of concurrent legislative power.

The fundamental right conferred by Article 31, has since the commencement of the constitution, been modified six times by amendments in the constitution. The conflict that arises due to the inclusion of Article 31 in the fundamental rights was that with regarding the term "compensation". Immediately after Independence, the first and foremost requirement before the then Government of India was abolition of Zamindari by payment of compensation.

However payment of compensation has caused numerous problems, and Government felt it beyond the financial sources of the country with a view to ensure that agrarian reform legislation did not run counter to the national objective, the constitution framers had provided for an in-built mechanism under Article 31(2) of the Constitution in as much as that provision contained the word 'compensation' without using any adjectives like 'just' or 'reasonable'. Since that provision was frequently challenged the word compensation was ultimately interpreted by the highest courts to mean 'just compensation'. Similarly, Articles 14 and 19(1)(f) came to be opening channels for litigations pertaining the Constitutional validity.

The question regarding the term Compensation' was first raised in *Kameshwar Singh V. State*

of Bihar. [140]In this case, the Bihar Land Reforms Act, 1950, provided for the transference to the state of the interests of proprietors and tenure holders in land including interest in trees, forests, jatkars, hats, mines and minerals provided that compensation was to be paid in certain multiples.

They varied from twenty times where the net income did not exceed Rs. 500 to three times where the net income exceeded Rs. 1 lakh. The Act was challenged on the basis of violation of Article 14 of the constitution. The Patna High Court held that the Act invalid and void for it contravened the provisions of Article 14. It was further held that Article 31 (4) would not prevent the Zamindari abolition laws from being challenged in a court on grounds other than those mentioned in clause (2) of Article 31.

The interpretation of Article 31 give rise to unanticipated difficulties and the government felt that the whole zamindari Abolition programme was endangered. To overcome the difficulty, the Constitution first Amendment Act, 1951 was enacted. It introduced two explanatory Articles 31-A and 31-B.

Article 31-A was aimed at removing social and economic disparities in the agricultural sector. This Amendment was aimed at protecting the Zamindari Abolition Acts, which says that no law providing the acquisition of any estate or right or modification of any right by the state shall be void on the ground that it is inconsistent with Article 14, 19, 31. 'Estate' in Article 31-A, broadly means "lands paying land revenue". As Article 31 was the only constitutional provision containing compensatory provisions, Article 31A means that an estate could be acquired or rights therein could be modified without paying compensation.

Article 31-B was also added. This Article purports to validate retrospectively certain specified Acts and Regulations already passed. 13 such laws were mentioned in the Ninth schedule which was to be read with Article 31-B.

Dwarakadas Shrinivas v. Sholapur Spinning and Weaving Co.[141] was a leading case on the unamended Article 31. In this case the constitutional validity of an Ordinance - The Sholapur Spinning and Weaving Company (Emergency Provisions) Ordinance, 1950 was impugned on the ground that it violated the provisions of clause (2) of Article 31, as it had no provision for

[140] AIR 1951 Pat. 91.

paying compensation to the Sholapur spinning and weaving Co. whose property was taken over by the state. In 1949 due to the mismanagement and neglect of the company the mill closed and an attempt to supervise the affairs of the company under the Essential supplies Emergency powers, 1946, failed. The Governor General on January 9, 1950, promulgated the impugned Ordinance under which the mills could be managed and run by directors appointed by the Central Government.

The contention of the government was that the Ordinance could not fall with in the mischief of Article 31 (2) because the state had not acquired the title in the property of the company and the possession was taken for purpose of managing the company and is not requisition for any state purpose. Court held that the Ordinance invalid on the interpretation of Article 31.

Court's view was the one agreeing with that of the interpretation of Article 31 and 19 (1) (f) in *State of W.B.v. Subodh Gopal.*[142] In this case it was made clear that the constitutional obligation of paying compensation arose only where the state action resulted in the substantial deprivation of private property of individual. The fact of the case was that the West Bengal Revenue Sales Act, 1859, was challenged on the ground of violation of Art. 19 (1) (f) and 31. In 1950 the Bengal Revenue sales Act, 1859 was amended and a new s. 37 was substituted for the old one and provided by sec. 7 that all pending suit, appeals and other proceedings which had not already resulted in delivery of possession should abate.

The respondent who had filed a suit to evict certain under-tenants under Sec. 37 of the Old Act there upon contented that Sec. 7 was void as violating Articles 19 (1) (f) and 31. It was held that Art. 19 (1) (f) dealt with abstract right to own property but the protection afforded to the concrete right to own property was contained in Article 31. The doctrines of eminent domain and police power were inapplicable to our constitution. Clauses (1) and (2) of Art 31 must be read together.

Clause (2) of Art. 31 says that compensation is payable if private property has been 'taking possession of' or 'acquired' by the state. The words 'acquisition' or 'taking possession of' used in clause (2) have the same meaning of the word 'deprivation' in Art-31 (1).

In 'acquisition' the transfer acquires full ownership of property and in the 'requisition' he gets temporary possession or use of the property. An abridgment could be so substantial as to

[142] AIR 1954 SC 92.

amount to a deprivation within the meaning of Article 31, if in fact, it withheld the property from the possession and enjoyment of the owner, or seriously impaired its use and enjoyment by him or materially reduced its value.

The requirement of payment of compensation to the owner whose property was acquired or taken possession of was considered in *State of W.B. v. Bela Banarjee*[143] The question considered was that whether compensation provided for under the west Bengal land Development and planning Act, 1948 was in compliance with the provision of Art 31 (2) of the constitution Under the State Act lands could be acquired many years after it came into force, but it fixed the market value that prevailed on December 31, 1946 as the ceiling on compensation without reference to the value of the land at the time of acquisition. The court held that provisions of the said Bengal Act fixing a ceiling on compensation without reference to the value of the land was arbitrary and therefore was not in compliance with the terms of Article 31(2) of the constitution. The decision laid down three points.

1. The compensation under Article 31 (2) shall be just equivalent of what the owner has been deprived of.
2. Principles the legislature can prescribe are only principles for ascertaining first equivalent to what the owner deprived of.
3. If the compensation is not just, then that is a justifiable issue.

With the decisions in these three cases two courses were open to the parliament. One was reform the 'Supreme Court' ad the second course was to disarm it by amending the constitution, and the second course was adopted by enacting the Constitution Fourth Amendment Act, to nullify those decisions.

In place of original Art -31 (2) the present Article 31 (2) was substituted the word 'requisitioned' for the expression "shall be taken possession of" and also made explicit, what was implicit in the Original Art. 31 (2), namely, that property could only be acquired for a public purpose. At the end of Art 31(2) a proviso was inserted which made the adequacy of compensation non - justifiable. Sub Art (2A) was designed to nullify the decision that 'deprivation' of property by itself amounted to 'acquisition' or taking possession of property, for it provided that deprivation of property which did not amount to transfer of the ownership

[143] AIR 1954 SC 170.

of right to possession of any owned & controlled by the state, was not to be deemed to be acquisition or requisition of property within the meaning of sub-clause (2). Article 31 A was amended by enlarging its scope. Schedule 9, which has to be read with Article 31 B was enlarged by adding several other Acts to it.

The co-relation of Article 31(4), 31 A and 31B was considered by Patanjali Sastri C.J. in State of Bihar v. Kameshwar Singh[144]. Art 31 (4) was at once narrower and wider that Art. 31 A. on the one hand Art. 31 (4) applied only to laws pending in the legislature at the commencement of the constitution, whereas Art. 31A applied to all laws. Art. 31 (4) excluded an attack on the ground of contravention of Art. 31 (2), whereas Art. 31 (A) excluded an attack based on the other provisions of part III as well. In fact the reason of enacting Articles 31A and 31B was that the words of Art. 31 (4) were found inapt to cover a challenge under Article 14. Article 31 (4) covered all kinds of property while Art 31 A related only to a particular kind of property - 'estates'.

Even after therefore said amendments certain other legislature measures adopted by different states for the purpose of giving effect to the agrarian policy were effectively challenged. Thus the Constitution seventeenth Amendment Act was made. Thereby the expression 'estate' in Article 31-A was amended retrospectively by a new definition given in Article 31-A (2). Another proviso was also added to 31-A (1). By this amendment forty four Acts were added to the Ninth schedule.

The constitutionality of the seventeenth Amendment itself came for attack in *I.C. 'Golak Nath v. State of Punjab*[145]. In the Golak Nath decision the Supreme Court, reversing its earlier decision, held that parliaments had no power to abridge or abrogate the fundamental rights. This rule in effect put a serious heck on the amending power of parliament. Thus in Twenty fifth Amendment in which clause (2) of Article 31 was again amended, a new clause (2-B) added and Article 31-C inserted. The amendment dropped the word 'Compensation' and instead inserted the word 'amount' in Article 31 (2) in order to avoid judicial review of compensation as just equivalent. Also a new clause (2-B) was added which provided that nothing in Article 19 (1) (f) shall affect any such law as was referred to in Article 31 (2) as amended.

[144] AIR 1951 Pat. 91
[145] AIR 1967 Sc 1643

Moreover Article 31-C was newly added, provides that notwithstanding anything contained in Article 13, no law giving effect to the policy of the state towards securing the principles specified in Article 39 (b) or (c) shall be deemed to be void on the ground that it is inconsistent with or takes away any of the rights conferred by Article 14, Article 19 or Article 31. No law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy.

The validity of the twenty fifth Amendment was upheld in *Kesavananda Bharati v. State of Kerala*[146]. The majority of the Supreme Court however said that though there was no scope of judicial review on the ground of in adequacy of compensation the court could still interfere on the ground that the state has fixed no amount or if the principles laid down in determining compensation resulted in non-payment of compensation.

ARTICLE-300A

Regarding the Right to property under Indian Constitution Forty Fourth Amendment Act, 1978, is more important, since it took away the right to property from the chapter an fundamental rights it Omitted Article 19 (1) (f) and Article 31 and inserted in their place a new Article 300 - A. Also some changes were made in the list of Acts included in the Ninth Schedule by omitting entries 87, 92 and 130.

The Amendment takes away the right to property as a fundamental right and makes it only a constitutional right which will be regulated by ordinary law. Article 300-A provides that "no person shall be deprived of his property save by authority of law". Thus only condition to be complied with for the acquisition of private property under the new Art. 300-A as a law of the Legislautre. The purpose for which property will be taken away or whether any compensation will be paid (both these conditions were necessary under repealed Art. 31) will be determined by the legislature. The right will be available against the executive interference.

H.M. Seervai an eminent constitutional jurist is of opinion that the abolition of the right to property as fundamental right would destroy other fundamental rights which are embodied in the constitutional. The fundamental right to the freedom of speech and expression, (which includes freedom to press and freedom of association, the freedom to move freely throughout the territory of India etc. would be destroyed if the right to property is not guaranteed as a

[146] AIR 1973 SC 1461

fundamental right and like obligation to pay, compensation for private property, acquired for public purpose is not provided for.[147]

The effect of the Amendment is that for violation of his right to property under Art 300A, a person will not be entitled to invoke the writ jurisdiction of the Supreme Court under Article 32. But he can invoke the jurisdiction of High Courts under Article 226.

The Supreme Court in *Bishamber Dayal Chandra Mohan* v. *State of U.P*[148], explained that the term 'law' in the context of Article 300A meant an Act of parliament or of a state legislature, or a statutory order, having the force of law that is positive or state made law.

The word 'property' used in Article 300A must be understood in the content in which the sovereign power of eminent domain is exercised by the state. The expression "right to property" includes the right to use/enjoy/ manage/ consume and alienate the same.[149]

It has been held that deprivation for the purposes of Article 300-A means acquisition or taking possession of property for public purpose, in accordance with the law made by parliament or a state legislature, a rule or a statutory order having force of law. Deprivation by any other mode is not acquisition under Art. 300A".[150]

Land Acquisition

Land Acquisition may be defined as the action of the government whereby it acquires land from its owners in order to pursue certain public purpose or for any company. This acquisition is subject to payment of compensation to the owners or to persons interested in the land. Land acquisitions by the government generally are with the land.

It is thus different from a land purchase, in which the sale is made by a willing seller. The government has to follow a process of declaring the land to be acquired notify the interested persons, and acquire the land after paying due compensation. Though land is a state subject, acquisition and requisition of property falls in the concurrent list which means that both the central and the state government can make laws on the matter, there are a number of local and specific laws which provide for acquisition of land under them but the main law that deals with

[147] Seervai, The Emergency Future Safeguards in the Habeas Corpees case. A criticism pp 150, 151.
[148] AIR 1982 SC 32
[149] T. Vijayalakshmi V. Town Planning Members, (2006) Sec 502
[150] Jilubhai Nanbhai Kachar V. State of Gujarat AIR 1955, Sc 142.

acquisition is the Land Acquisition Act, 1894, a century old legislation enacted in a very different social economic and political milieu. Post-Independence, the Indian government has not fundamentally changed the acquisition policy to reflect the values and needs of our times, which has resulted in legal, social cultural economic and political fallouts.

The Act authorizes government to acquire land for public purposes such as planned development provisions for town or rural planning, provision for residential purpose to the poor or landless and for carrying out any education, housing or health scheme of the Government. It hinders speedy acquisition of land at reasonable prices, resulting in cost overruns.

The issue of compulsory land acquisition has been cropping up at regular intervals with decisive socio- economic and political consequences, acutely witnessed during the Nandigram episode. Despite the raucous noises made about the inequality of the process and outcome of land acquisition, Successive Parliamentary sessions have failed to provide a coherent policy response addressing these concerns.

Undoubtedly, growing urbanization, increasing infrastructure requirements and rapid economic development have imposed high pressure on land in India. Private land is regularly acquired for both state sponsored development and private projects which has increasingly become contentious.

Eminent domain is the power of the government to take private property when it is needed for a public purpose. Such power is an incident of sovereignty. It is an offspring of political necessity. The term eminent domain seems to have originated in 1925 by Hugo Grotious who wrote of this power in his book" De Jure Belle Et Pacis".

The Latin term *Dominum Emines* which meant the meaning "Supreme Lordship" was used in the 17th century by Grotious to describe the concept of acquiring property for the public purpose. The power of the Government to acquire a private property for a public purpose rests upon the famous maxim "*Selus Populi Est Suprema Lex"*-which means that the welfare of the people or the public is the paramount law and also on the maxim "*necessita public major est quam"* which means public necessity is greater than private.

In the content of this doctrine property includes corporeal and incorporeal, movable and immovable, tangible and intangible. Eminent domain, compulsory purchase, compulsory acquisition of expropriation in common law legal system is the power of the State to

appropriate private property for its own use without the owner's consent. The term eminent domain is used primarily in the United States, where the term was derived in the mid-19th century from a legal treatise written by the Dutch jurist Hugo Grotious in1625. The term compulsory purchase originating in England and Wales, and other jurisdictions that following the principles of English law. Originally the power of eminent domain was assumed to arrive from natural law as inherent power of the sovereign.

The importance of the power of the eminent domain to the life of the State need hardly be emphasized. It is often necessary for the proper performance of governmental functions to take private property for public use. The power is inalienable for it is founded upon the common necessity and the interest of appropriating the property of the individual members of the community to the greater interests of the whole community.

Sinha C.J, in the landmark case of *West Bengal v. Union of India*[151], observed that the power of eminent domain is an inherent attribute of sovereignty not arising even out of the Constitution but independently or it and may be exercised in respect of all property in the State for effective enforcement of authority of the Union against all private property or property of the State.

Despite conferring this wide power of acquisition on the sovereign, the concept of Eminent Domain was subject to two restrictions. While emphasizing on the Union's power to acquire, the Courts have been cautious in overstating this as an absolute license to grab property. Hence the idea of public use or public purpose has been inextricably related to an appropriate exercise of the power of Eminent Domain and is considered essential in any statement of its meaning.

The other restriction on the exercise of this power is the requirement to pay compensation. Through all the Constitutional debates on the legitimacy of Right to Property and the legitimacy of acquisitions, the courts have continuously reiterated the point that expropriation of private property would be lawful only it was required for a public purpose.

Government most commonly used the power of eminent domain when the acquisition of real property is necessary for the completion of public projects such as roads, railways, public highways, schools, colleges, universities, dams, slums, drainage etc. and for many other projects of public interest, convenience and welfare and the owner of the property is unwilling

[151] 1964 1 SCR 37.

to negotiate for its sale. In many jurisdictions, power of eminent domain is with a right that just compensation made for the appropriation. Some uses the expropriation to refer 'appropriation' under eminent domain law, and may especially be used with regard to case where no compensation made for the confiscated property.

The tem condemnation is used to describe the act of government exercise its authority of eminent domain. It is to be confused with the term of the same name that describes the legal process whereby real property, generally building is deemed legally unfit for habitation due to its physical defects. Condemnation via eminent domain indicates the government is taking property; usually the only thing that remains to be decided is the amount of compensation. Condemnation of building on grounds of health and safety hazards or grass zoning violation usually does not deprive the owner of the property condemned but requires the owner to rectify the offending situation.

The exercise of eminent domain is not limited to merely to real property; Government may also condemn the value in a contract such as franchise agreements. The power of eminent domain in English Law derives from the form of real property. Many land owners assume that their property right is absolute under the law, but this is rarely the case. The right of eminent domain is the right of the State to assert either temporarily or permanently its domain over a piece of land on account of public exigency and for public good. In the case *Coffee Board* v *Commissioner of Commercial Taxes* (1988 3 SCC 263) the Court observed that the eminent domain is an essential attribute of sovereignty of every State and authorities are universal in support of the definition of eminent personality as the power of sovereign to take property for the public purpose without the owner's consent upon making just compensation.

As pointed out by the Supreme Court of India. "Under the common law of eminent domain as recognized in the jurisprudence of all civilized countries the state cannot take the property at its subject unless such property is required for a public purpose and without compensating the owner for its loss. But when, these limitations are expressly provided for and it is further enacted that no law shall be made which takes away or abridges these safeguard, and any such law, if made shall be void.

Position in Certain other Countries

(1) Position in India

The doctrine of eminent domain is imbibed in the Constitution of India in clear terms. In fact, the right to property as incorporated under the since repealed clause (f) of Article 19(1) of the Constitution was one of the Fundamental Rights under Part 3 which was later on removed from Article 19 by the 44th Constitutional (Amendment) Act, in 1978. In its place, a similar provision i.e., Article 300A was incorporated under Chapter 4 of the Constitution by the same said amendment with effect from 20.6.1979, thereby losing its nomenclature as Fundamental Right.

By the same amendment the provision relating to compulsory acquisition of property as provided for under the then Article 31 of the Constitution was deleted and Article 31A was incorporated in order to save the laws providing for acquisition of estates. Further discussion in respect of these Constitutional provisions is made elsewhere in this Book. Today, in India, there are enactments, such as the Land Acquisition Act, 1894, and the Land Requisition and Acquisition of Immovable Property Act, 1952, in force having relevance to the doctrine of eminent domain.

(2) Position in USA

In the United States of America (USA), the meaning and importance of the term "Eminent Domain" is similar to that of the general understanding of that term in India. In USA, "just compensation" is required to be paid when property is acquired by exercising the power of eminent domain. For the exercise of a power, "public use "of the property has to be established, as envisaged in the Fifth Amendment to the Constitution of USA. Over the years, the definition of "public use" has been expanded so as to include schemes meant for the economic development of the country such as eminent domain power to displace private homes and businesses in order to transfer the same to private developments that are mare profitable.

For instance in the judgment of the Supreme Court of Michigan, rendered in 1981 based on the precedent set in *Bermen* v. *Parker*[152], the Court permitted the neighborhood of Pole town to be taken in order to build a General Motors' plant. The US Courts in other States also relied on this decision, in spite of it being overturned as a precedent in 2004. This expansion of the

[152] 348 U.S. 26 (1954).

doctrine has also gained importance before the Supreme Court of the United States during the fall of 2004.

It is also pertinent to note that in USA, at times the power of eminent domain has also been used by communities to take control of planning and development activities. As for example, Dudley Street Initiative, a community group in Boston attained the right of eminent domain and used it to reclaim vacant properties for the purpose community development.

(3) Position in European Nations

In its application to the European Nations, the European Convention on Human Rights provides protection from appropriation of private property by the State. Article 8 of the Convention contemplates, "Everyone has the right to respect for his private and family life, his home and his correspondence", and prohibits interference with this right by the State, unless the interference is in accordance with law and is necessary for national security, public safety, economic wellbeing of the country; prevention of disorder or crime; protection of health or morals, or the rights and freedom of others.

This right is expanded by Article 1 of the First Protocol to the conventions, which envisages, "Every natural person or legal person is entitled to the peaceful enjoyment of his possessions". However , one exceptions to this right is that were the State deprives private possessions in public interest, it should be in accordance with law , and in particular, to secure payment of taxes.

(4) Position in France

In France, the "Declaration of the Rights of Man and of the citizen" contains the mandatory provision for payment of just and preliminary compensation before expropriation.

(5) Position in England and Wales

In England and Wales and such the territories that follow the principles of English law, the related term compulsory purchase of land is more commonly invoked while exercising the power of eminent domain.

(6) Position in Australia

In Australia, the power of eminent domain is recognised under the Australian Constitution. That power is vested in the Government. Under section 31 of the Australian Constitution of 1900, the Commonwealth Parliament is empowered to make law to acquire property on just terms from any State or person for any purpose in respect of which the parliament has power to make laws. The Constitution of Australia also aspires that the terms of acquisition of private property should be just and not nearly which the Parliament may be considered to be just.

Land Acquisition Law in India

The first step in the law relating to land acquisition India was the Bengal Regulation 1 of 1824 governing all the Provinces and controlled by the Presidency of Fort William. It provided provision for enabling the officers of Government to acquire, at a fair valuation, land or other immovable property required for roads, canals or other public purposes. In 1850, some of these measures were applied to the town of Calcutta such as confirming the title to land for public purposes. This Regulation was also extended so as to include Railways.

With regard to Bombay, the Building Act of 1839 (Act No. XXVIII) was in vogue as the first legislative step providing for acquisition of land for purposes of widening or altering any existing public road, street or other thoroughfares within the Bombay and Colaba areas. This Act was extended to Railways in the year 1850.

With regard to Madras Presidency, the Madras Act XX of 1852 was passed for the purpose of acquisition of land for public purposes in the Presidency area. Railways were also brought under this Act. Prior to the present Act, law relating to the acquisition of land was governed by the since repealed Act of 1870.

The first legislative step governing the land acquisition for the whole of British India was the Land Acquisition Act (VI) of 1857, which repealed all the previous enactments. The object of this Act was to make better provisions for the acquisition of land needed for public purposes within the possession and under the governance of the East India Company and for determination of the amount of compensation to be paid for the same purpose.

This Act empowered the Collector to fix the amount of compensation by agreement so far as possible, and if there was no such an agreement, the dispute had to be referred to the arbitrators

whose decision was final except where there was alleged misconduct or corruption. Since it was found that such a method of payment of compensation was unsatisfactory due to the incompetent and even corrupt arbitrative processes, and that there was no appellate mechanism against such awards, the Land Acquisition Act (X) of 1870 was enacted.

This Act provided for making a reference to the civil court for determination of the amount of compensation where the matter could not be steeled by the Collector by an agreement, with a provision to make an appeal to the High Court. Under this Act clear procedure was provided for the acquisition of land and determination of compensation.

Since it was found that the Act of 1870 was not, in practice, as effective as it ought to be for the protection of either the person interested in the lands or the public purposes, and the requirement of making a reference by the collector in all petty difference of opinions as to value delays in disposal and more expensive disputes, excess of value of the land in disputes, problem of payment of interest, there arose a need to amend the law. As a result, the Land Acquisition Act 1894 was enacted which is still in force, with due amendments made to it from time to time as a Central Act.

The Land Acquisition Act 1894

The Land Acquisition Act 1984 is an Act to amend the law for the acquisition of land by government for public purposes and for companies, and also for determining the amount of compensation to be made on account of such acquisition. The Act was made to apply to the whole of India except the state of Jammu and Kashmir. It is a Central Act and empowers the State Governments to make appropriate amendments to the main Act. In fact, many States in India have adopted the Act and made due modifications to it according to their local needs and aspirations.

The Act is a special enactment and a complete Code covering the entire field of land acquisition in India. It is divided into VII parts and consists of 55 sections. It has some interconnection in amending, modifying, repealing and adopting, with some other Central and State Acts like Electricity Act, 1910 etc.

Public Purpose and Compensation

Assembly of land is needed for public purpose and economic development, but the present land

acquisition policy deficient in many respects. Apart from procedural compliances prescribed under the Act, the primary bone of contentions the present framework relates to public Purpose, Compensation and 'resettlement or rehabilitation.

The Land Acquisition Act, 1894, enacted for the purpose of compulsory acquiring of land required for public purpose or for purpose of companies for determination of the amount of compensation to be paid on account of such acquisition.[153]

1. Rural development- S. 3(f) (i) covers provision of village sites, and the extension, planned development or improvement of existing village sites. S. 3(f) (ii) brings rural planning in to the ambit of public purpose.

[153] . Public Purpose has been defined to be Land Acquisition Act as under:

"Section 3 (f) : The expression" "Public purpose includes"

(i) The provision of village sites or the extension, planned development or improvement of existing village sites:

(ii) The provision of land for town or rural planning:

(iii) The Provision of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part in lease, assignment or outright sale worth the object of securing further development as planned.

(iv) The provision of land for a corporation owned or controlled by the State.

(v) The provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced to affect by reason of the implementation of any scheme undertaken by Government any local authority or a corporation owned or controlled by the State.

(vi) The provision of land for carrying out any educational, housing health or slum clearance scheme sponsored by Government, or by any Authority established by Government or by any authority established by Government for carrying out any such scheme or with the prior approval of the appropriate Government, by a local authority of a society registered under the Societies Registration Act. 1960 (21 of 1980) or under any corresponding law for the time being in force in a State or a co-operative society within the meaning of any law relating operative societies for the time being in force in any State.

(vii) The provision of land for any other scheme of development sponsored by Government or, with the prior approval of the appropriate Government by a local authorities.

(viii) The provision of any premises building for locating a public office

But does not include acquisition of land for companies

2. Social Welfare Activities: Section (3) (f) (v) covers provision of land for residential purposes to the poor or landless, or to persons residing in areas affected by natural calamities. It also covers persons displaced or affected by reason of the implementation of any scheme undertaken by the government, any local authority or corporation owned or controlled by the State. Similarly, S. 3(f) (vi) covers of provision of land for carrying out any educational, housing, health or slum clearance schemes. Such activities may be sponsored by the government or by any such authority established by the Government for carrying out any such scheme. They may also be carried out, with the prior approval of the appropriate Government, by a local authority, or by a society registered under the Societies Registration Act, 1860 or under any corresponding law for the time being in force in a state, or a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State. All such activities come within the definition of public purpose.
3. Government Activities: Sec 3(f)(iv) includes within the definition of public purpose provision of land for a corporation owned or controlled by the State. On the same lines, the provision of any premises or building for a public officer (but excluding acquisition of land for companies) is also within the definition of public purpose.
4. Other Developmental Activities: a large number of miscellaneous developmental activities carried out by the Government are included in the definition of public purpose like provision of planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment, or outright sale with the object of securing further development as planned. Also included is provision of land for any other scheme of development sponsored by the Government or with the prior approval of the appropriate Government by a local authority. This definition of public purpose, which is inclusive and not exhaustive, was inserted wide the 1984 amendment to the Land Acquisition Act. The bulk of litigation that the land acquisition had generated made the Government to provide a wide and general definition of public purpose to cover a wide range of activities so as to bring in any activity with even a shade of public interest within the ambit of the definition.

Public purpose will include a purpose in which the general interest of communities as opposed to the interest of an individual is directly or indirectly involved. Individual interest must give way to public interest as far as public purpose in respect of acquisition of land concerned.

In the Constitution of India, some guidelines can be traced as far as public purpose is concerned in Article 37 of the Constitution. The provisions contain in this Part (directive Principles of the state policy) shall not be enforceable by any Court, but the principles therein laid down are nevertheless fundamental in the governance of the country. It shall be the duty of the state to apply these principles in making laws.

According to Article 39 of the Constitution the State shall, in particular direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good. The laws made for the purpose of securing the Constitutional intention and spirits have to be for public purpose.

Because, public purpose is bound to vary with times and prevailing conditions in the community or locality and therefore the legislature has left it to the state (Government) to decide what public purpose is and also to declare the need of a given land for the purpose. The legislature has left the discretion to the government regarding public purpose. The government has the sole and absolute direction in the matter.

In *State of Bihar v. Kameshwar Singh*[154], a Constitution Bench of the Apex Court considered the expression public purpose. In that case the court held: The expression "public purpose" is not capable of a precise definition and has not a rigid meaning. It can only be defined by a process of judicial inclusion and exclusion. In other words the definition of the expression is elastic and takes its colour from the statute in which it occurs, the concept varying with the time and sale of society and its needs. The point to be determined in each case is whether the acquisition is in general interest of the community as distinguished from the private interest of an individual.

In the *State of Bombay v.R.S. Nanji*[155], the Court observed that it is impossible to precisely define the expression 'public purpose'. In each case all the facts and circumstances will require to be closely examined in order to determine whether a public purpose has been established prima facie, the Government is the best judge as to whether public purposes is served by issuing a requisition order but it is not the sole judge. The courts have the jurisdiction and it is their duty to determine the matter whenever a question is raised whether a requisition order is or is

[154] AIR 1952 SC 252.
[155] AIR 1956 SC 18.

not for a public purpose.

In the said case the court observed that the phrase 'public purpose' includes a purpose, that is an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals is direct and vitally concerned. It is impossible to define precisely the expression 'public purpose'. In each case all the facts and circumstances will require to be closely examined to determine whether a public purpose has been established. In that case the Court also referred to the following cases: The *State of Bombay v. Bhanji Munji & Another*[156] and *The State of Bombay v. Ali Gulshan*[157].

In *Arnold Rodricks v. State of Maharashtra*[158], while Justice Wanchoo and Justice Shah dissenting from judgment observed that there can be no doubt that the phrase 'public purpose' has not a static connotation, which is fixed for all times. There can also be no doubt that it is not possible to lay down a definition of what public purpose is particularly as the concept of public purpose may change from time to time. There is no doubt however that public purpose involves in it an element of general interest of the community and whatever furthers the general interest must be regarded as a public purpose.

In *Laxman Rao Bapurao Jadhav v. State of Maharashtra*[159], this Court observed that "it is for the State Government to decide whether the land is needed or is likely to be needed for a public purpose and whether it is suitable or adaptable for the purpose for which the acquisition was sought to be made. The mere fact that the authorized officer was empowered to inspect and find out whether the land would be adaptable for the public purpose, it is needed or is likely to be needed, does not take away the power of the Government to take a decision ultimately."

In *Scindia Employees' Union v. State of Maharashtra and others*[160] the Court observed as under. "The very object of compulsory acquisition is in exercise of the power of eminent domain by the State against the wishes or willingness of the owner or person interested in the land. Therefore, so long as the public purpose subsists the exercise of the power of eminent domain cannot be questioned. Publication of declaration under Section 6 is conclusive evidence of public purpose. In view of the finding that it is a question of expansion of dockyard

[156] 1955 1 SCR 777.
[157] 1955 2 SCR 867.
[158] 1966 8 SCR 885.
[159] 1997, 3 SCC 193.
[160] 1996, 10 SCC 150.

for defense purpose, it is a public purpose."

The right of eminent domain is the right of the State to reassert either temporarily or permanently its dominion over a piece of land on account of public exigency and for public good.

In the case of *His Holiness Kesavanantha Bharati Sripadagalaveru v. State of Kerala*[161], popularly known as "fundamental Rights case that any law providing for acquisition of property must be for a public purpose. Whether the law of acquisition is for public purpose or not is a justifiable issue. But the decision in that regard is not to be given by any detailed inquiry or investigation of facts.

The intention of the legislature has to be gathered mainly from the statement of Objects and Reasons of the Act and its Preamble. The matter has to be examined with reference to the various provisions of the Act, its context and set up, the purpose of acquisition has to be culled out there from and then it has to be judged whether the acquisition is for a public purpose within the meaning of Article 31(2) and the law providing for such acquisition."

The Supreme Court has also made interesting observations on the concept of land acquisition and the withering of rights over land of the citizens to conclude that a strict regime was required to be implemented before the citizens could be rendered landless. In this context, the Court expressed its opinion in the following terms. (Relevant Extracts from the Judgment are furnished below):

Admittedly, the Land acquisition act, a pre-Constitutional legislation of colonial vintage is a drastic law, being expropriatory in nature as it confers on the State a power which affects person's property right. Even though right to property is no longer fundamental and was never a natural right and is acquired on a concession by the State, it has to be accepted that without right to some property, other rights become illusory. This Court is considering these questions, especially, in the context of some recent trends in land acquisition. This Court is of the opinion that the concept of public purpose in land acquisition has to be viewed from an angle which is consistent with the concept of a welfare State.

The concept of public purpose cannot remain static for all time to come. The concept, even

[161] AIR 1973 SC 1461

though sought to be defined under Section 3(f) of the Act, is not capable of any precise definition. The said definition, having suffered several amendments, has assumed the character of an inclusive one. It must be accepted that in construing public purpose, a broad and overall view has to be taken and the focus must be on ensuring maximum benefit to the largest number of people.

Any attempt by the State to acquire land by promoting a public purpose to benefit a particular group of people or to serve any particular interest at the cost of the interest of a large section of people especially of the common people defeat the very concept of public purpose. Even though the concept of public purpose was introduced by pre-Constitutional legislation, its application must be consistent with the constitutional ethos and especially the chapter under Fundamental Rights and also the Directive Principles.

Conclusion

In construing the concept of public purpose, the mandate of Article 13 of the Constitution that any pre-constitutional law cannot in any way take away or abridge rights conferred under Part - III must be kept in mind. By judicial interpretation the contents of these Part III rights are constantly expanded. The meaning of public purpose in acquisition of land must be judged on the touchstone of this expanded view of Part - III rights. The open-ended nature of our Constitution needs a harmonious reconciliation between various competing principles and the overhanging shadows of socio-economic reality in this country.

Therefore, the concept of public purpose on this broad horizon must also be read into the provisions of emergency power under Section 17 with the consequential dispensation of right of hearing under Section 5A of the said Act. The Courts must examine these questions very carefully when little Indians lose their small property in the name of mindless acquisition at the instance of the State. If public purpose can be satisfied by not rendering common man homeless and by exploring other avenues of acquisition, the Courts, before sanctioning an acquisition, must in exercise of its power of judicial review, focus its attention on the concept of social and economic justice.

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Cyber Crimes against Women and Prevention

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ABSTRACT

Over the previous two decades, information technology has broadened to become the axis of today's global and technological progress. The internet offers every user with all of the necessary information as well as the quickest communication and sharing tool, making it the most valuable source of data. With the multiple advancements of the internet, internet-related crime has spread its roots in all directions. Individuals are at tremendous risk from cyber-crime. Women are the soft targets of this new sort of crime, which is a global occurrence. In this article, I have examined that how women are targeted by cybercrime and online security flaws. Despite the fact that crime against women is on the rise in many areas, being a victim of cybercrime may be a particularly distressing experience for a woman. Especially in India, where women are marginalised in society and the law fails to recognise cybercrime. In this work, I intend to describe the numerous sorts of cybercrimes that can be perpetrated against women, as well as how they affect her. I have also gone through some of the legislation that protect women in such situations, such as the Information Technology Act (2000) and Indian Penal Code, 1860. To reach at the conclusion, I have analyzed a number of well-known Cases in cybercrime (e.g., the Ritu Kohli case). At the end of this paper, I have discussed the alternatives available to cybercrime victims as well as the reforms that the legal system will need to do in order to effectively combat cyber criminals' increasing spirits.

Keywords: Cyber Crime, Women, Information Technology, Prevention, Security

INTRODUCTION

A 21-year-old lady saw an image of her face digitally placed on the body of another woman posted on a social networking site in the Salem region of Tamil Nadu in June 2016. She informed her parents and identified the culprit. He allegedly modified her picture using a

[162] B.A. LL.B., (4th Year), Army Institute of Law, Mohali

mobile phone app, uploaded it to the site, and tagged her in the post after she had refused his marriage proposal. A complaint was filed with the Cyber Crime Cell by the woman's father. She discovered another distorted photograph linked to her social networking account a few days later, this time with her name and her father's phone number. The woman committed suicide on the same day. In her suicide note, she expressed her complete ignorance about the distorted images and her failure to convince anybody.[163]

With the increasing use of the internet in our daily lives and the progress of information technology, the vulnerability of computer and internet users has risen dramatically in today's cyberspace. Modern computers/computing devices have a phenomenally high technological capacity, which allows for both misuse and criminal activity. Unfortunately, many people are unaware of the dangers they are exposed to while surfing the internet, posting on social networking sites, or keeping data on their computers. Criminals exploit internet as a platform to engage in a variety of illicit operations against people.

Women's safety has always been a concern, particularly in a country like India, where the rate of crime against women is growing like a coconut tree. It used to be restricted to roadways or areas far from home. Earlier, the safest location for a woman to protect herself from being victimised was her home, but that is no longer the case. For them, home is becoming an equally unsafe place, prone to crime.

CYBER CRIMES AGAINST WOMEN IN INDIA

India is one of the few countries to have passed the Information Technology Act of 2000 to tackle cybercrime. A number of cybercrime offences are defined in the Information Technology Act of 2000. Among the many undesirable deliberate actions on the internet, online abuse is a worldwide potential problem that has impacted online users of all ages, resulting in harassment such as gender bullying, trolling, stalking, and other forms of harassment. [164]

MEANING OF CYBER CRIMES

In common parlance, cyber-crime is any illegal activity that uses a computer as its primary means of commission.[165] A person's repetitive, unsolicited, hostile behaviour through cyberspace with the goal to intimidate, humiliate, threaten, harass, or stalk someone else is

[163] HINDUSTAN TIMES, https://www.hindustantimes.com/india-news/salem-woman-ends-life-after-facing-sexual-harassment-on-facebook/story-zoBB2zQEsoenHHIWQv68gM.html.

[164] LIVE MINT, http://www.livemint.com/Politics/St93190XdGvpiclGWwnX0I/For-victims-of-cyber-stalking-justice-is-elusive.html.

[165] Dr. Monika Jain, Victimization of women beneath cyberspace in Indian Upbringing, Bharati Law Review, April-June 2017.

known as cyber harassment. In other words any harassment perpetrated through electronic media such as social networking sites, chat rooms, or e-mail is also illegal under Indian law. Dr. Debarati Halder and Dr. K. Jaishankar define cybercrimes as: "Offences that are committed against individuals or groups of individuals with a criminal motive to intentionally harm the reputation of the victim or cause physical or mental harm, or loss, to the victim directly or indirectly, using modern telecommunication networks such as Internet (Chat rooms, emails, notice boards and groups) and mobile phones (SMS/MMS)."

On the internet, women are the most vulnerable and easy targets, making it simple to prey on the uninformed. People, particularly women, are most likely to be victimised via social networking platforms. Email harassment, cyber stalking, cyber pornography, obscenity, defamation, morphing, and email spoofing are the most common cyber-crimes against women.

TYPES OF CYBER CRIMES AGAINST WOMEN

1. **Cyber stalking**- Stalking means following someone with the goal of harassing or victimising them. It is defined as repetitive and unwanted harassing behaviour that is threatening and is purposely directed at a specific individual (the victim), and that would make a reasonable person worry for their own or their family's bodily harm or death. Cyber stalking is a digital version of physical stalking that takes place over the internet using information technology. Cyber stalking is the practice of following someone using the internet, e-mail, or chat rooms. The Wikipedia defines cyber stalking, where the Internet or other electronic means is used to stalk or harass an individual, a group of individuals, or an organization. It include the making of false accusations or statements of fact (as in defamation), monitoring, making threats, identity theft, damage to data or equipment, the solicitation of minors for sex, or gathering information that may be used to harass.[166]
   Cyber stalking does not involve any physical contact yet stalking through the internet has found favour among the offenders for certain advantages available like, ease of communication access to personal information and anonymity.[167] There are three ways in which cyber-stalking is conducted:-
   i. **Stalking via e-mail** - Harassment via email is a type of harassment that includes blackmailing, threatening, and sending love letters under false names or sending embarrassing emails to one's inbox on a regular basis. It is generally perceived of as a

[166]WIKIPEDIA, https://en.wikipedia.org/wiki/Cyberstalking.
[167] S. K. Verma, Raman Mittal, Legal Dimension of Cyberspace, New Delhi (2004), Indian Law Institute.

sort of stalking in which one or more people send unwelcome and often threatening electronic messages to another person on a regular basis. There isn't always a precise definition of what a harassing message should look or sound like.

ii. **Stalking through internet**- This is the serious aspect of cyber stalking, in which the stalker follows the victim's online activities and publishes false information about her on the internet.

iii. **Stalking through computer**- The stalker is a technocrat in this guise, and he can take control of the victim's computer as soon as it starts up. The stalker obtains access to and control of the victim's computer address in this incident. This type of cyber stalking necessitates a high level of technical knowledge in order to gain access to the target's computer, and the victim's only alternative is to disconnect the computer and abandon current internet address.

2. **Cyber defamation**: Another widespread cybercrime against women is defamation. Females are targeted more than guys, despite the fact that it can happen to either gender. When someone uses a computer or the internet to publicly broadcast defamatory information about another person, or sends defamatory texts or emails about that person, this is known as cyber defamation. Someone, for example, posts defamatory information about someone on a website or sends defamatory e-mails to all of that person's friends or relatives. Hacking someone's id on Facebook, Google, or any other social networking or mailing website is the most common method. It can also be done by creating a false profile of a person that has all of that individual's personal information, which resembles to be a genuine one to others on any website.
3. **Cyber pornography**: Female internet users are also at risk from cyber pornography. This encompasses pornographic websites with adult photographs and videos, as well as their distribution. The internet has made it easier to carry out crimes such as pornography. Pornographic and offensive content is now found on roughly half of all websites. Female members of society are being threatened in the name of pornographic websites in order to gain sexual favours or exact retaliation. The most common of these offences is morphing images with naked photographs and uploading them to pornographic websites. Because of the ease with which these sites can be found and accessed, more serious cybercrime has occurred.
4. **Morphing**: Morphing is the process of an unauthorised user altering an original photograph. It is typically carried out by an unauthorised user or a person using a false identity who downloads and edits the victim's original photo before uploading it. It has

been proven that deceptive users are more likely to download and share edited female photographs. This crime is committed with the intent of blackmailing or defaming the victims online.

5. **Privacy infringement**: Privacy infringement generally means the violation of privacy of any individual. It means taking photographs, making videos, records, private pictures and publishing them or sending them electronically to anyone without the consent of the individual. Any violation of the privacy is punishable and legal action can be taken against of it.[168]
6. **Online Trolling**: Trolling is characterised as making provocative or off-topic comments to females in online communities such as newsgroups, blogs, and social media (twitter or facebook) with the intention of disturbing them emotionally. It is carried out by trolls, who are professional abusers who fabricate false identification cards and utilise them for this reason to create a cold war atmosphere.
7. **Voyeurism**: The cybercrime voyeurism is committed when any man watches or captures the image of a women engaged in a private act in circumstances where she have the belief of not being observed either by the perpetrator or any other person but those images used to be disseminated.[169]
8. **Cyber Bullying**: Cyber bullying means the use of electronic communication to bully a person, typically by sending messages of an intimidating or threatening nature.[170] The main aim and objective behind such crime may be to defame the target out of anger, hatred or frustration or secondly when the perpetrator wants to make simple fun of his friends, classmates, juniors or unknown net friends.[171]

LEGAL REMEDIES AVAILABLE TO VICTIMS OF CYBER CRIMES

In order to ensure legal safety on the internet, the courts have played a critical role. The public must have faith and trust in the justice system. The court exists to serve society, and it will always be the backbone that allows a community to thrive and expand. A victim of cybercrime has the following legal alternatives:

1) SEXUAL HARASSMENT: SECTION 354A IPC, 1860

A man committing any of the following acts:

[168]Vartika Vasu, Krishnapriya.G, Cyber Crime Against Women: A Cyber Exploitation, Volume II Issue I.
[169] Ibid.
[170] Oxford Dictionary.
[171] Shobhna Jeet, Cyber crimes against women in India: Information Technology Act, 2000, (2012).

i. Physical contact and advances involving unwelcome and explicit sexual overtures; or
ii. A demand or request for sexual favors; or
iii. Showing pornography against the will of a woman; or
iv. Making sexually coloured remarks,

Shall be guilty of the offence of sexual harassment. The first three offences of sexual harassment bring a sentence of rigorous imprisonment for a period of up to three years, a fine, or both. The last offence of sexual harassment bears a penalty of either imprisonment for a term up to one year, a fine, or both.

STALKING: SECTION 354 D IPC, 1860

Stalking is defined as any man who:

i. follows a woman and contacts, or seeks to contact, her in order to encourage personal interaction despite her evident expression of disinterest; or
ii. monitors a woman's usage of the internet, e-mail, or any other kind of electronic communication.

And anyone who commits stalking is subject to a fine as well as a sentence of imprisonment of either description for a period up to three years if convicted on the first charge.[172]

2) VIOLATION OF BODY PRIVACY: SECTION 66E IT ACT, 2000

Capturing an image of a person's private body part is punished by up to three years in prison or a fine of not more than two lakh rupees, or both.[173]

3) SECTION 66D IT ACT, 2000

Any person who cheats by personation using any communication device or computer resource is subject to a sentence of imprisonment of up to three years and a fine of up to one lakh rupees, or both.

4) SECTION 66C IT ACT, 2000

Any individual who fraudulently uses another person's electronic identity, such as their signature or password, faces a sentence of imprisonment of up to three years and a fine of up to one lakh rupees, or both.

5) VOYEURISM: SECTION 354 IPC, 1860

Any man who watches or captures the image of a woman engaged in a private act in circumstances where she would normally expect not to be observed wither by the perpetrator or by any other person at the perpetrator's behest, or disseminates such image

[172] Indian Penal Code, 1860, §354 D.
[173] Information Technology Act, 2000, §66 E.

shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years,[174] and shall also be liable to fine, and shall be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but may extend to seven years, and shall also be liable to fine.[175]

In a case where the victim consents to the capture of the images or any act but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered as an offence under this section.[176]

6) **PUNISHMENT FOR PUBLISHING OR TRANSMITTING OBSCENE MATERIAL IN ELECTRONIC FORM: SECTION 67 IT ACT, 2000**

Whoever publishes, transmits, or causes to be published in electronic form any material that is lascivious or appeals to the prurient interest, or if its effect is such that it tends to deprave and corrupt persons who are likely, in light of all relevant circumstances, to read, see, or hear the matter contained or embodied in it, shall be punished on **first conviction** with **imprisonment** of either description for a term which may **extend to three years** and with **fine** which may **extend to five lakh rupees.**[177]

7) **MATERIAL CONTAINING SEXUALLY EXPLICIT ACT, ETC IN ELECTRONIC FORM: SECTION 67A IT ACT, 2000**

Anybody who publishes, transmits, or causes to be published or transmitted in the electronic form any content containing sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees.[178]

8) **SECTION 72 IT ACT, 2000**

Any person who illegally discloses any electronic information or other material containing personal information about another person without that person's agreement faces a sentence of imprisonment of up to three years or a fine of up to five lakh rupees, or both.

CASE LAWS ON CYBER CRIMES AGAINST WOMEN

Because women are uninformed of where to report such crimes and are hesitant to do so, the majority of cybercrimes go unreported. In the year 2000, the infamous Ritu Kohli case was reported as the first such cybercrime targeting women.

[174] Indian Penal Code, 1860, §354 C.
[175] Supra.
[176] Supra.
[177] Information Technology Act, 2000 §67.
[178] Information Technology Act, 2000, §67 A.

1. **RITU KOHLI CASE:** It was India's first reported internet sex crime. It was first reported in Delhi on Sunday, June 18, 2000. Manish Kathuria, a 30-year-old software engineer, was arrested by Delhi police officials from the Crime Branch for harassing a woman by messaging on the internet. Manish reportedly used to chat on website www.micr.com under the name of Mrs. Ritu Kohli. While chatting, he used profane language and gave her home phone number to continue the conversation. Mrs. Kohli began receiving inappropriate calls at her home as a result. Mrs. Kohli filed a complaint as a result of the disturbances, and after an investigation, the Delhi police identified the perpetrator and began criminal proceedings against him under section 67 of the IT Act and section 509 of the IPC for insulting Ritu Kohli's modesty.[179]
2. **STATE OF TAMIL NADU V. SUHAS KATTI:** This is a case involving the posting of obscene, libellous, and irritating messages in a Yahoo chat group concerning a divorcee woman. The accused forwarded emails to the victim through a fake email account he set up in her name. The woman was harassed online after the texts were posted, and she began receiving unpleasant phone calls in the notion that she was soliciting. As a result, she filed a case with the Egmore Court in February 2004. The culprit was tracked down and apprehended by the Chennai police cyber department based on the complaint. In addition, the accused was found guilty of violating sections 469/509 of the Indian Penal Code and section 67 of the Information Technology Act, 2000.[180]
3. **PURI CYBER PORNOGRAPHY CASE:** This was the state of Odisha's first cyber pornography conviction. To exact revenge on the complaint, Jayant Kumar Das, an RTI activist, constructed a false E-mail account and a bogus profile of the complainant's wife, Biswajit Patnaik, a journalist. He added nasty remarks and linked the bogus profile to an American porn website. On the porn page, he also disclosed the victim's phone number. After receiving obscene messages and phone calls, the journalist filed a FIR against Das at Puri's Baselisahi police station in July 2012. The inquiry was taken up by the Crime Branch's Cyber Cell in August 2012, and Das was arrested on September 18, 2012.The Puri Sub-Divisional Judicial Magistrate Court convicted RTI campaigner Das in a cyber-pornography case to 6 years imprisonment under section 66C/67/67A of the Information Technology Act.

[179] Vishi Aggarwal & Ms. Shruti, Cybercrime victims: A comprehensive study,6, IJCRT, 646, 2018.
[180] INDIAN KANOON, State of Tamil Nadu v Suhas Katti – Cyber law case in India, indiankanoon.org.

4. **DR. PRAKASH V. STATE OF TAMIL NADU:**[181] In the state of Tamil Nadu, this is the first case to be prosecuted under the IT Act. The case involves sex, pornography, the internet, and a mastermind who is reportedly a medical doctor. Doctor was charged with manufacturing pornographic images and recordings of various acts of sexual intercourse and selling them to 23 nations, ruining the lives of many young girls who were subsequently detained. When Ganesh filed a complaint with the municipal police, claiming to be a victim of the doctor, the story came to light. A case was lodged against the doctor and he was booked under section 67 of the IT Act, which deals with obscenity, the sentence can be of 5 years imprisonment with a fine of Rs. 1000 on the first conviction and penalty may extend up to 10 years imprisonment with a fine of Rs. 2 lakhs on the second conviction.[182]

PREVENTION OF CYBER CRIMES AGAINST WOMEN

Ms. Maneka Gandhi, the Union Minister for Women and Child Development, stated in May 2016 that online harassment of women in India should be treated the same as physical violence against women, and she established a new venue for redress. She also asked the National Commission on Women to set up a strategy to address women's online abuse.[183]

The Information Technology Act of 2000, as well as the Indian Penal Code of 1860, have suitable cyber-crime prohibitions. The government has implemented a number of legislative, technical, and administrative steps to prevent and combat cybercrime. These inter-alia includes:-

a) Each state has established Cyber Police Stations and Cyber Crime Cells for the reporting and investigation of cyber-crime cases.
b) The Ministry of Electronics and Information Technology (MeitY) has established Cyber Forensics Training Labs in north-eastern states and cities such as Mumbai, Pune, Kolkata, and Bangalore to train state police officials and the judiciary in cybercrime detection, collection, preservation, and seizure of electronic evidence, and dealing with cybercrime. Various national and state police academies/judicial academies and other institutes have been established by the Ministry of Home Affairs, Meity, and State Governments to modernise the setup and equip police personnel with knowledge and skills for the prevention and control of cybercrime.

[181] AIR 2002 SC 3533.
[182] THE HINDU, www.thehindu.com.
[183] Online trolling against Women to be considered violence: Maneka Gandhi, Deccan Chronicle, 18th May'2016.

c) On June 6, 2016, the Ministry of Electronics and Information Technology published an advice on the operation of matrimonial websites under the Information Technology Act, 2000. There are additional rules instructing matrimonial websites to implement measures to guarantee that people using these services are not fooled by fraudulent profiles or the misuse/posting of incorrect information on their websites.
d) The government has issued and distributed a Computer Security Policy and Guidelines to all Ministries/Departments on how to avoid, detect, and mitigate cyber-attacks.
e) The Ministry of Home Affairs has created a website, www.cybercrime.gov.in, for the public to report cybercrime complaints.[184]

Even now, the Indian police appear to be unconcerned about cybercrime. In such cases, a woman or young girl who has been a victim of cybercrime should first contact a women's assistance cell or non-governmental organisation (such as the All India Women's Conference[185], Sakshi[186], Navjyoti[187], or the Centre for Cyber Victims Counseling[188]), which will assist and guide them through the process. This will also ensure that the police do not dismiss the case.

It is worth emphasising that women may have a role in controlling cyber obscenity by becoming aware of their rights and following the safety procedures in place. Some well-known social media companies provide a number of privacy settings to defend and protect women against predators. Keep in mind, however, that most well-known websites indicate in their privacy policies that they will not be held liable for any form of harassment perpetrated against users by other users.

Women should read the privacy regulations or safety measures connected to such offences before registering on any other social media network. In most situations, negligence and lack of vigilance are also contributing factors to women becoming targets of cyber obscenity.

CONCLUSION

According to the official statistics provided by the National Crime Records Bureau, Government of India 9622 cases of cyber-crimes were registered in 2014 and 5752 persons

[184] Abhinav Sharma & Ajay Singh, Cyber Crimes against Women: A Gloomy Outlook of Technological Advancement 3 (2018), Volume 1 Issue 3.
[185] http://www.aiwc.org.in/ (Private group of women assisting other less fortunate women to fight the crimes committed against them).
[186] http://www.sakshingo.org/ (NGO assists women in dealing with govt. authorities).
[187] http://www.navjyoti.org.in/ (NGO by Kiran Bedi, assist women in several aspects).
[188] http://www.cybervictims.org/ (Private group of legal minded individuals who help the victims of cybercrimes).

arrested. In 2015, 11,592 cases were registered an increase of 20% in registration of cases from the previous year – and 8121 persons arrested. 4242 cases of cyber-crimes were registered in 2017.[189]

It is evident that cyber-crime against women has increased in our society with the arrival of information and technology, as well as access to the internet in nearly every hand. And it's past time for the legislative and the executive to work together to put a stop to it. Some of the prominent reasons for the growth of cyber-crimes against women can be regarded as:

- A large number of vulnerable targets- Loneliness is a major factor, as many female students and employees are separated from their families and work long hours at computers. As a result, the computers have become their trusted companion.
- Anonymity allows for easy concealment.
- Most cyber-crimes go unreported owing to fear of repercussions from society, reluctance, shyness, and the fear of defamation.[190]

To stay one step ahead of such criminals, the judiciary, as well as the police department and investigative agencies, should be equipped with current web-based technologies. The legal system and regulatory bodies have a responsibility to keep up with technology advancements and guarantee that emerging technologies do not become tools of exploitation and harassment. Though there were previously various challenges in dealing with cybercrime, such as the loss of evidence and the lack of a cyber-army, the Criminal Law Amendment Bill (2013) addressed the majority of these issues. Several adjustments, such as cyber-savvy judges, are still required. It can be stated that proper implementation of laws along with public awareness and education of women concerning their rights and legal remedies can play a crucial role in eradicating cybercrimes from our society.[191]

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[189] Crime in India 2017, Ministry of Home Affairs, Government of India, https://ncrb.gov.in/en/cyber-crimes-statesuts.
[190] Abhinav Sharma & Ajay Singh, Cyber Crimes against Women: A Gloomy Outlook of Technological Advancement 3 (2018), Volume 1 Issue 3.
[191] *Id.*

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Cryptocurrencies in the Globalized World

Dhananjai Rana[192]

ABSTRACT

The flaws of our present banking system, such as high fees, identity theft, and great economic inequality, are discussed in terms of how cryptocurrencies can offer answers. Cryptocurrencies could help with these problems. Beyond the banking sector, the technology that powers digital currencies is transforming supply chains and building a new, decentralized internet, among other things.[193]*Most of the time, neither a government nor another central organization issues or regulates cryptocurrencies. They are managed through computer peer-to-peer networks that employ free, open-source software. Everyone who wants to take part is generally welcome. The author's goal with this paper is to examine the viability and future of cryptocurrencies in India. It would be interesting to track the developments in Crypto in an era when our country has yet to fully transition from a reliance on physical currency to a digital economy. It would be particularly interesting to note the developments in the world of crypto after the government announced its plan to bring a bill on regulating Cryptocurrencies through centralized regulation of the legislation in 2021. Operations of crypto rely on AI and cyber laws due to its virtual existence, it would be interesting to read through the vigilance mechanism that the government would impose because of the crypto.*

Keywords: Cryptocurrency, Physical Currency, Legislation, Legal-tender money.

Introduction

A digital payment system known as Cryptocurrency does not rely on banks to verify transactions. It is stored in digital wallets and is verified by encryption. The original Cryptocurrency and currently the most well-known is bitcoin. After Bitcoin, numerous other cryptocurrencies, including altcoins, have emerged, and many of them have made an effort to position themselves as improved or modified versions of Bitcoin.[194]

[192] LL.M., O.P. Jindal Global University.
[193] Available at https://cointelegraph.com/category/expert-take last visited on 25/10/22
[194] Available at, https://www.trendmicro.com/vinfo/us/security/definition/cryptocurrency#:~:text=A%20cryptocurrency%20is%20an%20encrypted, buying%2C%20selling%2C%20and%20transferring. last visited on 25/10/22

Why Crypto

Crypto has some distinct advantages over other forms of currency that make it preferable to others, such as[195]

● **Transferability:** Dealing with someone on the other side of the globe is as easy as purchasing with cash at your neighbourhood supermarket.

● **Privacy:** You don't have to provide the merchant with any unnecessary personal information when you pay with Cryptocurrency. Additionally, there is very little possibility that your bank information or identity will be stolen because no critical information is transmitted over the internet.

● **Security:** Blockchain technology, which is constantly examined and confirmed by a significant amount of processing power, protects almost all cryptocurrencies, including Bitcoin, Ethereum, Tezos, and Bitcoin Cash.

● **Profitability:** Cryptocurrency holdings are not linked to any one financial institution or government, they are accessible from anywhere in the world, regardless of what happens to the main global intermediaries.

● **Transparency:** All of the networks for Bitcoin, Ethereum, Tezos, and Bitcoin Cash make their transactions transparent to the public. This implies that it is impossible to manipulate transactions, alter the money supply, or alter the game's rules in the middle of it.

● **Profitability:** Payments made using cryptocurrencies cannot be cancelled, unlike those made with credit cards. For retailers, this dramatically lowers the likelihood of fraud. It can lower transaction costs for consumers by getting rid of a key justification for the high processing fees used by credit card firms.

● **Security:** There has never been a hack on the Bitcoin network. Additionally, the fundamental ideas behind cryptocurrencies help to ensure their security. For example, permission less systems and open-source core software enable a huge community of computer scientists and cryptographers to thoroughly analyse the networks' architectures and security.

Functioning of Cryptocurrencies

The first digital money independent of a central intermediary was Bitcoin. Before Bitcoin, there was no method to reach distributed consensus without a centralized player. Simply said, the distributed consensus is when a sizable number of people who are separated by distance agree

[195] Available at, https://conotoxia.com/cryptocurrencies/what-are-cryptocurrencies/cryptocurrency-features, last visited on 25/10/22

on something. Bitcoin's solution to the trust problems that prevented the creation of decentralized money was the introduction of the Blockchain.[196]

Digital signatures, Merkle Trees, and the cryptographic notion of Proof-of-Work are all applied to a single distributed ledger (an open ledger to which anyone has access) in the Bitcoin Blockchain.

To make sure that every transaction has a distinctive signature that can only be obtained with a private key, digital signatures are utilized. Merkle trees accomplish this by utilizing the hashing algorithm. A string of characters is transformed into a fixed-length value or key that symbolizes the original string through the process of hashing.

Types of Cryptocurrencies

Using a decentralized network of users, cryptocurrencies are intended to conduct transactions by sending value (akin to digital money). This category includes a large number of altcoins, sometimes known as value tokens, which are digital currencies other than Bitcoin and Ethereum.[197]

Crypto is popular in the following types:

1. Tokens

There are security tokens that are correlated with a project's or company's value (as in securities like stocks, not safety). An initial coin offering token, for instance, represents a share in a project. Other tokens, like Namecoin and Storj, are used for specialized tasks or to carry out specified tasks.

2. Ethereum (ETH)

With the help of the decentralized software platform ETH, smart contracts and decentralized apps may be created and operated without interruption, fraud, centralization, or outside influence. With ETH, everybody in the world, regardless of country of origin, race, or religion, will be able to freely access a decentralized suite of financial products.

[196] Available at https://www.kaspersky.com/resource-center/definitions/what-is-cryptocurrency last visited on 25.10.22
[197] Available at https://www.investopedia.com/tech/most-important-cryptocurrencies-other-than-bitcoin/ last visited on 25/10/22

3. Tether (USDT)

One of the first and most well-known stablecoins was Tether (USDT), which was also one of the first. By linking their market value to a currency or other external benchmark, stablecoins seek to lower volatility. The price of Tether is directly correlated with the price of the US dollar.

4. USD Coin (USDC)

In 2018, USD Coin was introduced by The Center Consortium, which also consists of Circle and Coinbase. Due to the circle's location in the United States, it is controlled, making USD Coin a regulated stablecoin. As of July 8, 2022, the market capitalization of USD Coin is $55.5 billion, at a $1 per coin pricing.

5. Binance Coin (BNB)

A Cryptocurrency called Binance Coin (BNB) is used to pay trading commissions on the Binance Exchange. One Binance Coin (BNB) was worth about $241.83 as of July 8, 2022, giving the Cryptocurrency a market valuation of $39 billion.

6. Binance USD (BUSD)

As a stablecoin linked to the US dollar, Binance USD was created by the Cryptocurrency exchange Binance. Due to the stablecoin's approval by the New York State Department of Financial Services, it is also governed. At $0.9994 per coin on July 8, 2022, Binance USD had a $17.5 billion market cap.

7. XRP

On July 8, 2022, XRP had a $16.5 billion market cap and was priced at about $0.34. The XRP Ledger, which Ripple created as a payment system in 2012, uses XRP as its native token. For consensus and validation, the protocol does not use proof of work or proof of stake.

8. Cardano (ADA)

Cardano (ADA) is an "Ouroboros proof-of-stake" cryptocurrency developed by engineers, mathematicians, and cryptography experts using a research-based approach. The project's

researchers have published over 120 papers on blockchain technology covering a wide range of topics. The eighth-largest market capitalization belongs to Cardano at $15.7 billion as of July 8, 2022.

9. Solana (SOL)

Solana is a Cryptocurrency that runs on the Solana blockchain (SOL). Its value has skyrocketed since its inception. Solana is worth about $38 and has a market capitalization of $12.8 billion. According to market capitalization, it is the ninth-largest Cryptocurrency.

10. Dogecoin (DOGE)

Some claim that Dogecoin (DOGE) was the first "meme coin," and some prominent businesses now accept it as payment because it has a Shiba Inu as its avatar. The coin is the tenth-largest Cryptocurrency by market capitalization with a value of $19.2 billion at roughly $0.07.

11. SHIB

In the fall of 2021, Shiba Inu (SHIB), a namecoin that was modeled after another namecoin, gained popularity and briefly surpassed Dogecoin in terms of market valuation.

12. Polkadot

It is a unique proof-of-stake coin made to work with different blockchains. The relay chain, its key element, facilitates network interoperability. As of July 8, 2022, Polkadot's market value was about $6.9 billion. Gavin Wood, one of the original core founders of the Ethereum project, developed it.

Need and importance of Crypto

The bill is likely to impose a minimum investment amount in cryptocurrencies while prohibiting their use as legal tender or currency substitutes. The bill also proposes to lay the groundwork for the creation of an official digital currency to be issued by the Reserve Bank of India and regulated under the RBI Act.[198]

[198] Available at, https://cointelegraph.com/defi-101/why-do-we-need cryptocurrencies#:~:text=The%20cryptocurrency%2C%20a%20key%20fintech,to%20make%20payments%20more%20manageable. Last visited on 25/10/22

Here are 5 reasons why cryptocurrencies need to be regulated:

1) **Volatility:** Cryptocurrencies are volatile and difficult to understand because of the lack of authorized information and the technological complexities associated with them. As a result, it is critical to enact regulations to protect investors. Bitcoin reached all-time highs in early 2021 before plummeting and losing a large portion of its value.

2) **Accept certain cryptocurrencies:** There are thousands of cryptocurrencies in the world. Most investors are only familiar with a few of them, including Bitcoin. As a result, regulatory authority was established to protect customers. It is necessary to clear cryptocurrency, which can reveal all information about the performance of digital assets.

3) **Understanding technological risks**: There are thousands of cryptocurrencies in the world. Most investors are only familiar with a few of them, including Bitcoin. As a result, regulatory authority was established to protect customers. It is necessary to clear cryptocurrency, which can reveal all information about the performance of digital assets.

4) **Risks of online fraud and cyber security:** Investing in cryptocurrencies introduces a new risk: online fraud. Hacking is a major threat all over the world, and cyber-attacks are becoming more common. Authorities can put in place regulations to help cryptocurrency investors protect their assets. Investors can also address concerns or reclaim their investments if they are lost.

5) **Money laundering:** Any unregulated system can be used to fund criminal activities. As a result, similar to a bank, a client due diligence process is required. This can aid in tracking down investors' true identities and verify their locations when buying or selling cryptocurrencies. Any violation of such standards should result in severe penalties.

Legal Existence

In India, all companies will be required to disclose their investments in cryptocurrencies, as well as any profit or loss involved in the transaction, beginning with the new fiscal year.[199] The Income Tax Act makes no distinction between income earned legally and income earned

[199] Available at, https://www.mondaq.com/india/fin-tech/1194412/legal-status-of-cryptocurrencies-in-india-government- recognition-and-tacit-de-facto-approval-of-digital currency#:~:text=The%20latest%20amendment%20to%20Schedule,loss%20involved%20in%20the%20transaction. Last visited on 25/10/22

illegally. As a result, the Income Tax Department can collect taxes on all incomes. When the government becomes aware that income has been generated illegally, it has a statutory obligation to punish the perpetrators under various punitive laws, such as the Indian Penal Code, the Benami Transactions Act, and so on. Because the government has not yet initiated criminal proceedings against any cryptocurrency investor, trader, or service provider, it can be safely assumed that the government is tacitly agreeing that income earned from cryptocurrencies is legal income from a legal source.

The central government ban on Crypto

In India, cryptocurrencies are unregulated, but the government announced in Budget 2022 a flat 30% tax on gains from cryptocurrency transactions. The FSB report would be useful in determining whether crypto should be prohibited. Only prohibiting it in India would leave the door open for cross-border transactions via wallets, an official said.[200]

What about the encumbrance?

Once a decision is made on the legality of cryptocurrency, the next step is to impose GST. Before imposing GST, it must first be determined what type of asset it is—is it a commodity or a service? We anticipate that the report will aid in answering these questions. "Those discussions are largely ongoing and are dependent on whether we intend to legalize it or not," the official said.

RBI's Stance

The Reserve Bank of India (RBI) has recommended that legislation be drafted in response to the destabilizing effect of cryptocurrencies on a country's monetary and fiscal stability. The central bank has identified several risks associated with cryptocurrency asset markets, including links between such markets and the regulated banking system.

Cryptocurrency and regulation of official digital Currency: A step to recognize Crypto

The Indian government's stance on cryptocurrencies is cautious, as evidenced by the proposed tax regime and its administration. According to the proposed amendments to the Income Tax Act 1961 ("IT Act") made by the Finance Bill, 2022 ("2022 Bill"), income arising from the

[200] Available at, https://techcrunch.com/2022/07/18/indias-central-bank-wants-to-ban-cryptocurrencies/#:~:text=India's%20central%20bank%20wants%20to%20ban%20cryptocurrencies%2C%20government%20says,Jagmeet%20Singh%2C%20Manish&text=India's%20central%20bank%20wants%20to%20ban%20cryptocurrencies%2C%20the%20government%20told,world's%20second%20largest%20internet%20market. Last visited on 25/10/22

transfer of virtual digital assets (cryptocurrencies and NFTs) will be taxed at a rate of 30%.[201] (For a detailed understanding of the tax implications of virtual digital assets in India, read ELP's Union Budget 2022 Analysis.)

The latest draft of the Cryptocurrency and Regulation of Official Digital Currency Bill, 2021 ("draught Bill") seeks to outlaw all private cryptocurrencies in India, among other things. However, it is important to note that the entire foundation of the cryptocurrency ecosystem is decentralized. Because no centralized entity or authority is operating the ecosystem, the industry cannot be banned or regulated from the start. What can be regulated/banned is the use, holding, transactions, and so on, which appears to be sought in the draught Bill as well. The government favors banning cryptocurrency for four reasons: volatile price fluctuations, the risk to consumers from cyber-attacks and Ponzi schemes, the impact on power consumption (a study estimated that about 19 households in the United States could be powered for one day with the electricity used for a single Bitcoin transaction), and finally its potential use in criminal activity, such as money laundering, terrorism, and so on.

The Transition of Crypto in India

In spite of the vulnerability of the fate of cryptographic forms of money in India, interest in unregulated computerized resources, especially Bitcoin, has been on a fleeting ascent starting around 2020.[202] As per information from different indigenous digital currency trades, more than 1.5-2 crore Indians have put resources into the resource class, which outperformed the $10 billion imprint in November of this current year. The developing number of digital money clients proposes a change in the country's venture worldview, which is known to incline toward gold and other more secure resources. Allow us to investigate the historical backdrop of the virtual resource before the eagerly awaited Cryptographic money and Guideline of official digital currency Bills.

2008- Generation of the idea of Cryptocurrencies

The excursion of digital currency started in 2008 with the distribution of a paper named "Bitcoin: A Shared Electronic Money Framework" by Satoshi Nakamoto, a pseudonymous engineer.

[201] Available at, https://www.medianama.com/2022/03/223-cryptocurrency-regulation-india-legal-anatomy/#:~:text=As%20per%20the%20Finance%20Bill,at%20the%20rate%20of%2030%25. Last visited on 25/10/22

[202] Available at https://www.drishtiias.com/blog/the%20future%20of%20cryptocurrency%20in%20india last visited on 25/10/22

2010: The first transaction of sale involving Crypto

After two years, the main Bitcoin exchange happened, with somebody trading 10,000 Bitcoin for two pizzas. Interestingly, digital forms of money were given a financial worth. Other cryptographic forms of money, like Litecoin, Namecoin, and Swiftcoin, before long followed, and the computerized resource got some momentum.

2013: First Circular Regarding Cryptocurrencies issued by RBI

As crypto speculations expanded in India, and trades like Zebpay, Pocket Pieces, Coinsecure, Koinex, and Unocoin grew up, the Save Bank of India (RBI) gave a round in 2013 advance notice clients of the potential security dangers of utilizing virtual monetary forms.

2016-2018: Demonetisation and RBI's Banking Ban on Crypto

India's central bank, the Save Bank of India (RBI), has cautioned that virtual monetary forms are not lawful and delicate. The Focal Leading group of Computerized Duty (CBDT) presented a draft plan for the money service in Walk 2018. This managed a critical disaster for digital currency trades, with exchanging volumes dropping by close to 100%.

November 2018: India Wants Crypto campaign germinated in India

Nischal Shetty launched the #IndiaWantsCrypto campaign in support of positive crypto regulation in India. The campaign's first impact was seen when Rajeev Chandrashekhar, a sitting Rajya Sabha MP, responded positively. Celebrities such as Unocoin's Sathvik Vishwanath, Anthony Pompliano, and DJ Nikhil Chinapa later joined the campaign.

March 2020: Supreme Court Strikes Down the Crypto Banking Ban

The ban was a huge setback, prompting crypto exchanges to file a writ petition in the Supreme Court, and the ban was eventually overturned, declaring the RBI circular unconstitutional.

As a result, cryptocurrency exchanges reopened, and the Supreme Court ruling came at the best possible time, coinciding with the crypto boom.

2021: Announcement of Crypto Bill,

India's Standing Committee on Finance met with the Blockchain and Crypto Assets Council (BACC) and other cryptocurrency representatives in November 2021. They concluded that cryptocurrencies should be regulated rather than banned. In January 2021, the Indian government announced that it will introduce legislation to create a sovereign digital currency.

The Bottom Line

As per current signs, crucial areas of strength for a system will be set up in India to manage digital currencies. The choice of which administrative body will deal with the matter is as yet being made. In all probability, the public authority will see cryptographic money as a resource class as opposed to cash. Subject matter authorities agree guidelines will build straightforwardness and responsibility in cryptographic money exchanging stages. Balanced governance may likewise be utilized to forestall extortion and track cross-line exchanges. In spite of vulnerability about the fate of unregulated computerized resources, digital currency reception has advanced over the most recent two years, with India turning into the biggest financial backer. Accordingly, it will be fascinating to see where the crypto venture goes in India after the parliamentary bill is passed.

Crypto: The booming Trend

Cryptocurrencies are the first alternative to the traditional banking system, with significant advantages over previous payment methods and asset classes. They can provide an alternative to dysfunctional fiat currencies for savings and payments in areas where inflation is a major issue. One strategy is to buy and hold something like bitcoin, which has gone from being virtually worthless in 2008 to be worth thousands today.[203]

Challenges to implementing Crypto in India

- **Crypto and the store of Value**:[204] Cryptocurrency is a new asset class that has gained popularity as a store of value. Bitcoin, the most popular cryptocurrency, first appeared on the monetary scene in 2009. Bitcoin is currently worth around $23,000, which is 70% less than its all-time high of $69,000 in November of last year. Despite its volatility, Bitcoin is regarded as an unrivalled investment tool and store of value. Several governments and major corporations have invested in Bitcoin and kept it on their books. It isn't just Bitcoin. In general, the digital asset class is regarded as a store of value and a hedge against inflation. Despite recent price drops, crypto enthusiasts believe Bitcoin and other altcoins will recover and provide a high return on investment. But what makes these virtual digital assets valuable? Let us investigate!

[203] Available at, https://www.moneycontrol.com/msite/wazirx-cryptocontrol-articles/the-journey-of-cryptocurrencies-in-india/ last visited on 25/10/22
[204] Available at, https://www.cnbc.com/2022/07/12/op-ed-the-toughest-challenges-for-cryptocurrency-lie-ahead.html, last visited on 25/10/22

- **Underlying value:** Bitcoin and other cryptocurrencies are based on and operate on blockchain networks. These networks are proving to be a valuable piece of infrastructure, capable of reimagining and redeploying financial concepts for a new global monetary system. Aside from finance, they are finding applications in supply chain management, healthcare, real estate, voting, and a variety of other industries. Given their future scope, their future value appears promising.
- **Lack of Legal Status of Crypto:** In the Union Budget 2022, the Indian money serves expressed that "any pay from the move of any virtual computerized resource will be charged at the pace of 30%". Digital money pay is legitimate to pay from a lawful source. Assuming that the public authority chooses to arraign residents who bargain in digital currencies, it will without a doubt open the so-called Pandora's case for the public authority.
- **Weak Vigilance mechanism:** The Service of Corporate Issues has chosen to watch out for organizations managing Bitcoin to forestall misrepresentation. This comes as the nation's money service considers carrying out Bitcoin guidelines. A between clerical board is now researching the utilization of Bitcoin and expected administrative mechanisms.
- **Absence of Cyber laws:** The value of some crypto, such as Dogecoin, increased by 8,300% last year, surpassing even bitcoin. While it is unclear how many people in India own cryptocurrency, some large crypto exchanges claim to have over 15 million users.
- **The transition from Physical Money to E-money**: The value of some crypto soared by 8,300% last year, exceeding even that of bitcoin. While it's still not clear how many people in India own crypto, some of the large crypto exchanges such as CoinSwitch Kuber claim to have over 15 million users.
- **The transition from E-money to Crypto**: The World Bank estimates that lowering fees to 2% could increase remittances to low-income countries by $16 billion per year. Sub-Saharan Africa is a mobile money leader, accounting for nearly half of all mobile money accounts worldwide. Digital passports enable mobile money providers to on board customers at a low cost while adhering to local regulations.

Maintaining a balance

- A financial inclusion strategy cannot be based solely on a signal falling from the sky. A coordinated infrastructure investment push is required, including expanding internet access to poorer and more remote areas. Regulation must strike the right balance, including incentivizing new payment companies to enter the market while limiting their dominance.

Digital currencies issued by central banks will almost certainly require changes to the central bank and monetary law. Countries must not lose sight of the bigger picture in their efforts to join, benefit from, and regulate the digital money revolution.[205]

- A clear and responsible vision of tomorrow's payment, financial, economic, and environmental landscape must guide the path to digital money adoption. Prudent

Existence of Crypto in different countries

Many governments have introduced regulations to limit its use for these purposes. The Library of Congress has identified 103 countries that allow or restrict the use of cryptocurrencies.[206] Some of these are elaborated on below:

The United States

On Bitcoin, the US Department of Treasury has provided advice. Bitcoin is a convertible currency that can be used in place of actual money or as a real-world equivalent. An MSB is obliged to register with the US Treasury, abide by the Bank Secrecy Act, and provide reports on transactions worth more than $10,000.

The European Union

The European Banking Authority has warned the public and businesses about the risks of cryptocurrencies while asserting that it has no control over crypto-asset operations. In 2020, the European Commission published its completed draught of proposed regulations to control crypto assets. This Act aims to level the playing field for financial institutions across the EU and prevent the fragmentation of financial regulatory systems.

Canada

In Canada, cryptocurrency exchanges fall under the category of money service enterprises. The Proceeds of Crime (Money Laundering and Terrorist Financing Act) applies to them as a result. In addition to registering with FINTRAC, they also have to follow compliance strategies, report any questionable transactions, and maintain specific records.

[205] Available at, https://www.livemint.com/brand-stories/the-powerful-effects-of-cryptocurrencies-on-the-economy-11650629242780.html last visited on 25/10/22
[206] Available at, https://indianexpress.com/article/technology/crypto/cryptocurrency-bill-all-top-countries-where-cryptos-is-legal-illegal-or-restricted-7947092/ last visited on 25/10/22

Australia

Similar to Canada, the Australian Taxation Office sees Bitcoin as a financial asset having a monetary value that can be taxed when specific circumstances arise. When you exchange, sell, give away, convert it to fiat currency, or use Bitcoin to make a purchase, a capital gains tax is triggered. For tax purposes, you must also maintain track of any Bitcoin transactions you make. In Australia, you might not owe any taxes if you exclusively use your Bitcoins for personal purposes and make money off of them.

El Salvador

The only nation in the world to declare bitcoin legal tender in El Salvador. In June 2021, the nation's Congress gave President Nayib Bukele permission to formally accept bitcoin as payment.

Other Countries Where Bitcoin Is Legal

Several other nations have created regulatory frameworks and permitted the use of bitcoin in financial transactions and have developed forms of regulation. . Denmark, France, Germany, Iceland, Japan, Mexico, Spain, and the United Kingdom are a few examples.[207]

Countries Where Bitcoin has been declared illegal explicitly Although Bitcoin is widely used around the world, several governments are now paying closer attention to it. Others worry about its use to support illegal operations, while some regard it as a danger to their current monetary systems.[208]

Countries with Implicit Bans

- In its November 2021 update, the Library of Congress found 42 nations having implied prohibitions on certain cryptocurrency usage. It mentions a few of the following nations: Bahrain, Burundi, Central African Republic, Cameroon, Gabon, Georgia, Guyana, Kuwait, Lesotho, Libya, Macao, Maldives, Vietnam, and Zimbabwe

Countries which banned cryptocurrency

[207] Available at, https://www.investopedia.com/articles/forex/041515/countries-where-bitcoin-legal-illegal.asp last visited on 25/10/22
[208] Available at, https://www.investopedia.com/articles/forex/041515/countries-where-bitcoin-legal-illegal.asp last visited on 25/1/0/22

In November 2021, the Library of Congress identified nine nations that have outright restrictions on cryptocurrencies. Namely, Algeria, Bangladesh, China, Egypt, Iraq, Morocco, Nepal, Qatar, and Tunisia

Reason: Interest in digital forms of money such as crypto and other Initial Coin offerings ("ICOs") is very hazardous and speculative. A certified proficient ought to continuously be counselled before pursuing any monetary choices because each individual's circumstance is novel. No certifications or cases are made by Investopedia regarding the idealness or precision of the data on this site.

Conclusion

In a best-case scenario, international authorities may agree on a global framework for regulating cryptocurrencies by 2023 and beyond. Around the world, viewpoints on cryptocurrencies range from "Bitcoin is an official currency" in El Salvador and the Central African Republic to "Crypto transactions are illegal" in China. The Biden administration has assembled a highly qualified team to monitor cryptocurrency regulation. Cryptocurrencies will be recognized as legal tender in El Salvador and the Central African Republic in 2021, but not in the US. The distinctions between a sophisticated ledger with smart contracts, like Ethereum or Dogecoin, and a value storage system, like Bitcoin, will be obvious to regulators who are knowledgeable about the subject. The likelihood of the US taking action is very less.

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Opportunities and Challenges of Aquariculture for Entrepreneurship Perspective: An Assessment With Reference To Bihar

Raka Bharti[209]

ABSTARCT

The fisheries sector is a large source of employment and export revenue, a key dietary Input and an important element of local livelihood. Fish are very diverse animal and can be categorized as many ways. Aquariculture is the culture of attractive, colorful Ornamental fishes of various characteristics, which are reared in a confined aquatic system. Farmers and hobbyists mainly grow it. Presently, Ornamental fish production globally is a multibillion dollar industry. According to FAO, 2012 In India the Ornamental fishes contributing about 1% of the total ornamental fish trade. In India Kerala, Tamil Nadu and West Bengal mainly practice ornamental fish farming. The Ornamental fish trade in India although growing continuously, our contribution to the Global trade is insignificant. It is estimated that 1.25 percent of Indian urban household are keeping an aquarium.

Bihar has great potentials in Aquarium fish production due to the availability of rich biodiversity of species, favorable climatic conditions and availability of affordable labor cost. Bihar is blessed with Vast and varied fisheries and aquaculture resources. These resources are in the form of rivers, reservoirs, lakes, mauns, chaurs, irrigation canals, ponds and community tanks. The fishers see these as complementary employment—depending on the season, they fish or farm. Fisheries sector of this state is an important, most promising and fast growing food farming sub-sector of Bihar accounting 7.97% annual growth rate. Bihar have enough potential for diversification of aquaculture like introduction of ornamental fish culture and propagation of ornamental aquatic plants. The availability of immense aquatic resources of the state and huge population of fisher folk resources can promote backyard small scale ornamental fish farming to satisfy the demand of fish but also plays an important role in gainful employment generation to youth and woman fisher folk, food and nutritional security, poverty

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alleviation, state income growth and finally socio-economic up-gradation of the rural community. Govt. of Bihar, Animal and Fisheries Resources Department has taken initiative to encourage fresh water from farming ornamental fish culture and propagation of ornamental aquatic plants and air-breathing fish culture, in 11th five years plan. Recently a training center on ornamental and production has been established recently at ICAR Research Complex for Eastern Region at Patna. It will impart training to rural women for their empowerment through 5 days training programme on "Ornamental Fish Culture and Management for Livelihood Improvement of Rural Women" at ICAR Research Complex for Eastern Region. NFDB, N Hyderabad Introduces Need of Best Management Practices to Freshwater ornamental fish production, its addresses the whole management practices of ornamental fish culture in an umbrella within all states of India. NCDC and NABARD is currently working to promote the development and culture of ornamental fishes viz. activities are being taken up, in state. The Bihar fish jalkar management 2006. 2007 .2010 and 2018 (amendment) also assure employment to all.

This study is a doctrinal review on ornamental fish culture in state with the aim to focus on the new opportunities of backyard small scale ornamental fish farming to create entrepreneurship to fishers and also for many hobbyist, it also can be helpful to conserve the biodiversity's of various species which have both the nutritional and ornamental values. Bihar has blessed with these series of valuable species. First, we should develop alternatives as, specialized training program should arrange for fisher and especially fishers women for identification and culture of ornamental fishes. Second, it needs necessary policy framework, various infrastructure, credit and institutional support, third develop a chain of stable marketing facilities from producers to consumers. It could play significant role in the global trade while providing large number of employment in the rural areas.

Keywords: Aquariculture, Ornamental Fish Culture, Ornamental fish Biodiversity, Aquatic Resources, fisher folk, Entrepreneurship**.**

Introduction

Aquarium keeping has gained popularity as a hobby, and selling ornamental fish has recently become very competitive. In developing nations like India, the trade in ornamental fish can be extremely important to the economy as a means of generating foreign cash as well as a possible source of rural employment. An essential business aspect of aquaculture, aquaculture meets positive needs and promotes environmental sustainability. Small-scale aquaculture can increase the output of live bearers, improving the socioeconomic standing of Indian fishermen.

Even though Andhra Pradesh holds India's top spot in aquaculture, the region has not yet been fully developed. Inland aquatic resources, including rivers, canals, reservoirs, ox-bow lakes, flood plain lakes, ponds, and tanks, are abundant and diverse in the state of Bihar.. One of the emerging industries that has the ability to enhance the socioeconomic situation of the rural community is fishing. Not only do ornamental fish play a significant commercial role in fisheries, but they also add aesthetic value and aid in environmental upkeep. Our contribution to the ornamental fish trade worldwide, however, is minuscule. Approximately 210 indigenous species of ornamental fish are currently exported to various nations across the world. Colisa, loaches puntius, glass fish, eels, and other small decorative fish can be found in the wetlands and river systems of the West Champaran, East Champaran, Sitamarhi, Muzaffarpur, Madhubani, Rohtas, and Bhojpur districts of Bihar. Aside from heavily flood-prone locations, almost all of Bihar's districts are candidates for aquaculture. The water bodies are blessed with inaugural potential of ornamental fish resource, especially North-Bihar have huge natural resources of indigenous ornamental fishes and diversified as compared to the South-Bihar. In spite of the fact that the freshwater habitats of Bihar proliferate many varieties of ornamental fishes, buy only very few of them have been introduced to international market. The knowledge about, adaptive behavior, habitat characteristics, population structure, distribution pattern and biodiversity status are vital for conservation and development of various captive breeding techniques. These aquarium fishes are rich in both nutrient value and ornamental values. But, there is lacking in awareness about their distribution pattern, population characteristics, diversity, behavior, captive breeding. Therefore, it is necessary to organize and develop the sector with a view to provide employment to rural youth as entrepreneur and strengthen women and the economy of the state. The effort is made to mobilise and identify aquarium fishes from different districts of Bihar. The main objective of this study is to analyze the status of ornamental fish culture with employment perspective.

Methodology

The state of Bihar is selected as Area of study. To examine the concept and to assess and analyze the challenges, its need to know where, why and how the issue is resolved to ensure participation towards Aquariculture. To all these sight its need to analytical study about whole process related to concerned topic. Study complete through study of books journal, publication, newspaper, article, published and non-published paper etc. about, literature of concerned topic about ornamental fish species production ,through aquariculturesocio economic upliftment of fishers, Fisheries policy to encourage ornamental fish culture,

employment generation after studying marketing frame by various government publications
Descriptive: The present scenario of ornamental fish culture with reference to Bihar, the study of wetlands in Bihar, ornamental fish species found in Bihar.

Review: Literature review about backyard ornamental fish culture process, its scope and opportunities in the state of Bihar, the marketing structure and challenges for employment purpose, on fisher's employment in Bihar, action plan to use the ornamental resources and fish species to employment generation, govt. programme to initiate aquariculture.

Statement of Problems and prospects of ornamental fish sector In Bihar

The ornamental fisheries industry is dealing with a number of issues, both technological and economic. Lack of technical expertise and scientific knowledge on culture-related issues including breeding, feeding, and health management are the main constraints. The majority of business owners are unaware that this developing industry/sector generates significantly more revenue than prawn culture while requiring significantly less investment and risk. Due to a lack of infrastructure, the state of Bihar has so far been unable to establish any framework for the trading of ornamental fish.

Due to ignorance, the majority of India's native ornamental fish are cheap and are consumed as food in rural and small towns. In many ways, the ornamental fish trade in India is not well-organized.

In India and the state of Bihar, there are currently no appropriate Acts or policies for the growth of the ornamental fish sector. More government initiatives, such as offering incentives to start ornamental fish production facilities, might draw significant private investment to this sector, leading to the creation of more job opportunities and an improvement in the standard of living for the local population. The ornamental fish farming industry can be developed significantly in the area with the diligent efforts of all stakeholders, and as a result, it will gain a larger share of the global market. By establishing ornamental fish production facilities in various areas of the region, public-private partnerships can be encouraged, making this industry more vibrant and lucrative for entrepreneurship creation and livelihood development.

Scenario of ornament fish culture in Bihar as compare to other state

The aquarium interest is roughly 70 years old in India. In both the Western Ghats and the North-Eastern hills of India, there is a great variety of freshwater fish. Of the 300 freshwater fish species found in the Western Ghats, 155 are regarded as ornamental, with 117 of those being indigenous to the region. Only a small portion of the attractive fish diversity is currently used in the domestic ornamental fish trade, and the majority of ornamental fishes offered in India

are exotic kinds. Even though there are many indigenous fish species with great potential as ornamental fish, they have not been used appropriately. Diverse fish species found in the Western Ghats make good choices for the ornamental fish trade. More than 100 local freshwater ornamental species. Some of the species have high price in the world market and also support trade outside the country. Breeding nature of this ornamental fishes are broadly classified as live bearers and egg layers. Fish, barbs, koi carp, the Western Ghats have potential of streams and rivers are as a rich source of the ornamental fish is yet to be recognized. The majority of fish in aquariums come from freshwater, with the remainder coming from brackish and marine waters. About 90% of the freshwater ornamental species are cultivated, and only 10% are wild species. The opposite is true for marine and brackish water species. Around 85% of the market originates from the north-eastern regions, with the remaining 15% coming from the southern Indian states. The North Eastern states are home to roughly 58 native species of ornamental fish, which are currently exported. The demand for many native ornamental fishes varies from year to year. The majority of fish species from north-eastern states are traded; in 2014–15, 69.26 tonnes of these fish were exported, valued at 566.66 crores of rupees. On the whole, states trade, these fishes are exported to the tune of 69.26 tons, having the value of Rupees 566.66 crores in 2014 – 15[210]. On an average, during the period 1995 to 2014an Annual growth rate of about 11 percent has been recorded[211]. A vast number of native species has contributed significantly to the development of ornamental fish industry in the country. North-eastern states, West Bengal, Kerala and Tamil Nadu are blessed with potential indigenous ornamental species. About 90% of native species (85% are from northeast India) are collected and reared to meet export demand.[212]In India from 1969 Ornamental fish trade started with export earnings of US $ 0.04 million[213]presently, nearly about 100 native species are cultured as aquarium fish[214]. There is also a great demand for exotic species due to its color, shape and appearance. More than 300 exotic species are covered in the Indian market to ornamental fish trade, approximately 200 species are breed in India. At least 150 commercially important ornamental fish species and export mainly indigenous freshwater species collected from rivers. 90% of India exports go through KolkataPortfollowedby, 8% from Mumbai and 2% from

[210]Growth And Performance Of Marine Fish Exports Of India, Satish kumar M And Gururaj B
[211]Handbook of fisheries statistics2020 , ministry of fisheries , animal husbandry publication
[212]Ornamental fish farming in India,https://vikaspedia.in/agriculture/fisheries/fish-production/culture-fisheries/ornamental-aquaculture/ornamental-fish-farming-in-india

[213]https://www.ncdc.in/documents/downloads/161804052015.-Sample_DPR-Ornamental-Fish-Culturchange.pdf
[214] Swain, S.K., Bairwa, M.K., Sivaraman, I., 2016. Ornamental fish culture, ICAR-CIFA Extension Series, 21

S. No	Scientific Name	Common Name
1	Puntius phutunio	Dwarf barb
2	Puntius chola	Swamp barb
3	Puntius conchonius	Rosy barb
4	Puntius sophore	Spot fin swamp barb
5	Puntius ticto	Two spot barb
6	Puntius terio	One spot barb
7	Puntius gelius	Golden barb
8	Puntius sarana	Olive barb
9	Oreichthyscosuatis	High fin barb
10	Rasbora den icon ius	Dark line rasbora
11	Rasbora rasbora	Scissors tail rasbora
12	Nemacheiluspavonaceus	Horizontal stripe loach
13	Nemacheilus triangularis	Triangular banded laoch
14	Nemacheilusbotia	Leopard loach
15	Lepidocephalusthermalis	Spiny loach
16	Botialohachata	Tiger loach
17	Botiadario	Necktie loach
18	Botiadayi	Hora loach
19	Mystustengra	Tiger zebra catfish
20	Mystusvittatus	Striped dwarf catfish
21	Mystusbleekeri	Day's Mystus
22	Mystuscavasius	GangaticMystus
23	Pseudeutropiusatherinoides	Indian patasi
24	Aorichthysaor	Long whiskered catfish
25	Salmostomaphulo	Fine scale razor belly minows
26	Ompokpabda	Pabda catfish
27	Chacachaca	Indian chaca
28	Wallago attu	Fresh water shark
29	Bagariusbagarius	Gangetic goonch

S. No	Scientific Name	Common Name
36	Colisalalia	Dwarf gourami
37	Colisasota	Sunset gourami
38	Anabas testudineus	Climbing perch
39	Xenentodoncancila	Gar fish
40	Ch ann a marulius	Giant snakehead
41	Channa orientalis	Asiatic snakehead
42	Channa gachua	Pig my snakehead
43	Channa stewartii	Tank gobi
44	Glossogobiusgiuris	Tank goby
45	Pisodonofisboro	Blind eel
46	Mastasembelusguntheri	Small eel
47	Nandus nandus	Leaf fish
48	Amblypharyngodon mola	Mola carplet
49	Chanda ranga	Glass fish
50	Chanda nama	Elongated glass perchlet
51	Macrognathuspancalus	Spiny eel
52	Mastacembelusarmatus	Long eel
53	Channa striatus	Kobra snakehead
54	Macrognathus aculeatus	Peacock eel
55	Notopteruschitala	Clown featherback
56	Notopterusnotopterus	Knife fish
57	Barilius bola	India trout
58	Bariliusbendelisis	Hamil ton's baril a
59	Pisodonophisboro	Rice paddy eel
60	Labeocalbasu	Calbasu
61	Labeo bata	Bata
62	Brachydaniorario	Zebra danio
63	Oreichtyscosuatis	High barb
64	Chela laubca	Indian hatchet fish

30	Hara jardonii	Stone catfish
31	Gangatacenia	Clown catfish
32	Glyptothoraxannadalei	Stone catfish
33	Eristhistespussilus	Gangetic erethiste
34	Tetradoncutcutia	Ocellated puffer fish
35	Colisa fasciatus	Giant gourami
65	Pangasius pangasius	Pungas
66	Badisassamensis	Scarlet badis
67	Dario devario	Devario danio
68	Noemachielusrupeli	Long snouted loach
69	Olyralongicaudat	Long fighting catfish
70	Pseudeutropiusatherinoides	India potasi
71	Botiarostrata	Geto loach
72	Danio dangila	Giant leopard danio
73	Garragotylagotyla	Brown algae eater
74	Aplocheilus panchax	Blue panchax
75	Ompokbimaculatus	Shovel mouth catfish
76	Nangranangra	Kosinangra
77	Ctenops nobilis	Indian paradise fish
78	Chela dadiburjori	Orange chela
79	Hara hara	Butterfly catfish
80	Botia striata	Striped loach

Table No -1 List of ornamental Fish diversity In Bihar

(Source :(http://www.cifri.res.in/Bulletins/Bulletin%20No.191.pdf)

Chennai. 27 countries[215]. Presently, India represents a total of 400 freshwater ornamental fish belonging to 175 genera and 50 families (Rand and Gupta, 2017) out of which West Bengal contributed 176 fresh water indigenous ornamental fish (Mahapatra et al., 2014b) that is about 44%. A total of 250 freshwater ornamental fish of the NEH region, Assam contribute the maximum number 187 species (Mahapatra et al., 2004a). The rich ornamental fish diversity of the Eastern and North Eastern region have been attributed to many reasons, viz., the diverse geographical conditions that results in the formation of a variety of torrential hill streams, rivers, lakes and swamps, and drainage patterns, which include the Ganga, Bhagirathi, Teesta, Damodar, Mahananda, East Kolkata Wetlands systems. About 85% of indigenous fish species are mostly collected from river, streams etc. and cultured to meet the market demand

[215]ORNAMENTAL FISH EXPORTS FROM INDIA PERFORMANCE, COMPETITIVENESS AND DETERMINANTS

(Mahapatra, 2018). Due to over exploitation and ecological degradation some species are not available frequently although earlier found as dominant species. In-spite of having huge potentiality, India's contribution to the international ornamental fish trade is about negligible. If the resources are managed properly, India can be one of the leaders of the world ornamental trade in coming years.

CIFRI report on inland mapping of Bihar says that the total maximum water spread area is 1, 30,492hac, in which mostly resources is underutilized and untapped[216]. 60 lakh population of fishers livelihood based on fish culture. A total no. of 36 species with 16 families recorded in KusheshwarAsthanChaur, Darbhanga[217], beside this , and a huge series of ornamental fish species found in Kanwar lake wetland , Begusarai , wetlands systems of Darbhanga , West Champaran, , Muzaffarpur,Sitamarhi, East Champaran, Madhubani, Rohtas and Bhojpur districts , Kosi and gangetic region of Bihar[218](As seen in table no -1) . Presently, there is big sustainability threat to these resources, this needs for an urgent attentions on formulating sound ecological and economic strategies.

In Bihar, the sacred Ganges and its tributaries offer abundant aquatic resources. The Gandak, Koshi, Kamala-Balan, and other Himalayan-originated riverine systems have several tributary networks in the northern region of Bihar. Additionally, the riverine tributaries are forming a number of geographical land structures, including oxbow lakes (known locally as Maun), depressed land water bodies (known locally as Chaur), and artificial earthen ponds (known locally as Pokhari). The vast fish biodiversity in the area is supported by these riverine systems and their associated landforms. Every body of water serves as a shelter, feeding site, and breeding ground for many fish species throughout the seasonal flood period. The agricultural and fishing industries are mostly responsible for the economic activity and employment in north Bihar and improvement of the fishing industry. In addition to that, there is a huge possibility of culturing ornamental fishes with aquatic cash crop and food fishes. It can give surplus income to the concerned stakeholders like fishers, exporters and importers, which is an added advantage in sustaining the agribusiness in this part of the country. In this context, we briefly describe the effective utilization of enormous aquatic resources for culture of ornamental fishes, and the associated trade potential along with the possible economic benefits

[216]Das B. K., Sahu S. K. and Parida P. K., (2022). Inland water bodies of Bihar, ICAR-CIFRI, Barrackpore.
[217]KusheshwarAsthanChaur (North Bihar) Status and prospects for fisheries development, ICAR-CIFRI, Barrackpore
[218]Pandey G, PGT, (Geography), India Status of Wetlands in Bihar: Degradation and Their SustainableManagement,

to the local fishermen in north Bihar.

Amongst the huge diversity of the fish species, mainly those fishes are considered important for ornamental purposes which are beautiful and attractive due to their peculiar coloration, behaviour and morphology. The keeping of ornamental fish is one of the hobbies with an aesthetic value of its own, and hence has a huge trade potential globally. Internationally, the ornamental fish trade has been continuously growing. However, India doesn't find a place anywhere in top 10 exporting countries of the world, which features our neighboring country Sri Lanka[219]. The north-eastern states of India are mainly involved in the ornamental fish trade. Furthermore, in the global ornamental fish trade, more than 60% of fishes are of freshwater origin. In north Bihar, we have observed the potential ornamental fishes such as Barb, glassfish, gourami[220] , etc., which can easily be captured from the water resources available in the region. In Bihar many species are cultured due to their well-developed rearing practices under the incentives of high market price and tremendous international demands.

Opportunities in Aquariculture in the State of Bihar

Bihar has an abundance of fish biodiversity and aquatic resources. We have identified about 70 different kinds of fish, and more than a dozen of those might be raised and sold as ornamental fish. Due to their relatively small size, ease of management, need for less space, economic viability, and extremely high demand, ornamental fish have many advantages and thus command high market prices. Therefore, in north Bihar, this would be a very lucrative endeavour. North Bihar's Chaur, Maun, and Pokhari, which are plentiful, can be used for this. The development of ornamental fisheries in north Bihar can benefit related industries including packaging, live and artificial feed production, and decorative aquatic plant production. Altogether they can generate huge opportunity of employment for the rural communities, can increase per capita income of the state, and can also earn foreign exchange for the country. It may also reduce the migration of local labour force by generating livelihood options in their own region. For sustenance of the ornamental fish ventures in long term, conservation of the local fish biodiversity as well as water resources is also of critical importance.. The irregularities in the earning patterns of their men counter parts coupled with need for livelihood sustainability force most of the women to earn from a variety of fishery related activities like ornamental fishery and its allied sectors. Women as entrepreneurs can contribute much to the

[219]Monticini, P., 2010. The ornamental fish trade production and commerce of ornamental fish: technical-managerial and legislative aspects, Globefish research programme, FAO, 102, 7

[220] Raut et al., 2020. Potential and Opportunity for Ornamental Fishes in North Bihar. Research Today 2(7): 677-679.

national productivity, generate employment opportunities, develop economic independence, improve standard of living leading to self-confidence, enhanced awareness and sense of achievement. As such women fit into this particular entrepreneurial avenue owing to their enormous innate patience provided they are trained. Considerable effort is needed to capture the existing and latent entrepreneurial potential of women in this sector. About ten per cent peoples in the world keep aquarium in their homes. People keep fish in their homes for variety of reasons: for decoration, children's education, enjoyment, good fortune and to collect rare species or even to propagate them. Indian waters possess a rich diversity of ornamental fish. This has been well established that aquarium fish can fetch about 100 times morepricethan the food fish and marine ornamentals are about ten times costlier compared to freshwater fishes. Profitability of an ornamental fish-exporting unit works out to be highly lucrative, provided the activity is taken up on scientific lines with appropriate marketing strategies.

The ornamental fish culture and breeding activity is possible not only on large scale but on a small scale basis as well. It provides good opportunity even to small entrepreneurs. Institutional funding for research and development activities is, however, essential. Commercial banks can formulate schemes for extending financial assistance to prospective entrepreneurs for short-term training programs on production of ornamental fishes. Two of the major areas which require urgent attention are (a) in-house breeding of selected species of marine ornamental fishes which are in great demand to release the pressure on wild capture and (b) scheme for educating/training of fisher folk in more skilled and specialized techniques of collecting, handling, sorting and transport of ornamental fish which could revolutionize the fishery industry to greater extent.

In the 11th five-year plan, the Bihar government's Animal and Fisheries Resources Department has taken steps to promote fresh water fish farming, decorative aquatic plant propagation, and air-breathing fish culture. Recently, state and federal governments introduced programmes specifically designed to enhance ornamental fish culture, including SaatNischay-2, which was created to establish and maintain ornamental fish culture and marketing. Recently, the ICAR Research Complex for Eastern Region in Patna built a training centre on decorative and manufacturing. At the ICAR Research Complex for Eastern Region, a 5-day training programme on "Ornamental Fish Culture and Management for Livelihood Improvement of Rural Women" will be provided to empower rural women. Need For Best Management Practices in Freshwater Ornamental Systems, by NFDB, Hyderabad. NCDC[221] and

[221]. The National Cooperative Development Corporation (NCDC) was established by an Act of Parliament in 1963

NABARD[222] are taking in promoting the development and culture of ornamental fishes and so far various activities are being taken up, in state. The Bihar fishjalkar management 2006, 2007, 2010 and 2018 (amendment) also assure employment to fishers. According to jalkar management act ,Section 5 of the said Act 13, 2006, a following new subsection (iv) shall be added by amendment 2007, that Settlement of Jalkars in the state is to be aimed at maximizing fish production and productivity scientifically and increase more and more avenues of employment for fisher folk." Ornamental fish culture can be the best initiative towards improve employment for the fisherman community.

Challenges facing in ornamental fish culture and trade

The sector needs systematic identification of potentially significant ornamental fish varieties, in-depth research on their biological aspects and behaviour, breeding, and husbandry despite having a huge potential for ornamental fish diversity and both domestic and international demand. Ornamental fish keeping at home is reportedly becoming one of the most well-liked pastimes worldwide. The second-biggest hobby in the world is keeping aquariums. The aquarium fish and accessory market is quickly growing in prominence because of all the fantastic earning potential. Growing interest in maintaining aquarium around the world is due to their minimal space requirements compared to other pets. An aquarium may be put up and maintained in any position in the home where there is open space or diffused light, and it is relatively expensive to do so. Many individuals around the world have found ornamental fish care and distribution to be appealing since it offers not only elegance, beauty, and enjoyment but also potential financial rewards. Aquarium keeping as a hobby is picking up steam in developing nations like India.

Conclusion

There is sufficient fish biodiversity in Bihar. We identified more than a dozen fish species which has potential to be cultured as ornamental fishes. Abundantly available water resources in the region can be used for culture and capture of these fish species, which will certainly create huge employment opportunities and generate additional livelihood options for the local people involved in fish farming and trading. The fish diversity needs to be explored further for its utilization in time to come. It also needs to be conserved for the sustenance of the culture and trading of ornamental fishes in long term. *Firstly, we* should develop alternatives as,

as a statutory Corporation under the Ministry of Cooperation. Planning, promoting and financing programmes for production, processing, marketing, storage, export and import of agricultural produce, food stuffs, certain other notified commodities e.g. FISHERY.

[222]National bank of agriculture and rural development, which is a government setup financial institution for the support and to promote rural development and sustainable fisheries in the country.

specialized training program should arrange for fisher and especially fishers women for identification and culture of ornamental fishes. *Secondly,* it needs necessary policy framework, various infrastructure, credit and institutional support, *thirdly,* there should be developed a chain of stable marketing facilities from producers to consumers. It could play significant role in the global trade while providing large number of employment in the rural areas.

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